
Purpose:

. . . . Inefficiencies in current infrastructure project decisions, including management of environmental reviews and permit decisions or authorizations, have delayed infrastructure investments, increased project costs, and blocked the American people from enjoying improved infrastructure that would benefit our economy, society, and environment. More efficient and effective Federal infrastructure decisions can transform our economy, so the Federal Government, as a whole, must change the way it processes environmental reviews and authorization decisions.
(a) safeguard our communities and maintain a healthy environment;

(b) ensure that Federal authorities make informed decisions concerning the environmental impacts of infrastructure projects;

(c) develop infrastructure in an environmentally sensitive manner;

(d) provide transparency and accountability to the public regarding environmental review and authorization decisions;

(e) be good stewards of public funds, including those used to develop infrastructure projects, and avoid duplicative and wasteful processes;

(f) conduct environmental reviews and authorization processes in a coordinated, consistent, predictable, and timely manner in order to give public and private investors the confidence necessary to make funding decisions for new infrastructure projects;

(g) speak with a coordinated voice when conducting environmental reviews and making authorization decisions; and

(h) make timely decisions with the goal of completing all Federal environmental reviews and authorization decisions for major infrastructure projects within 2 years.
Federal agencies should follow transparent and coordinated processes for conducting environmental reviews and making authorization decisions, including:

- **open coordination** among Federal, State, tribal, and local agencies and **early engagement** with the public,
- **holding Federal agencies accountable** for their progress on implementing the policy, and
- **measurably better environmental outcomes** with respect to infrastructure development.
Federal agencies shall:

(i) use "One Federal Decision;"

(ii) develop and follow a permitting timetable, reviewed and updated at least quarterly by the lead Federal agency in consultation with Federal cooperating and participating agencies; and

(iii) automatically elevate to appropriate senior agency officials of the lead Federal agency and the Federal cooperating and participating agencies to which the milestone applies.
CEQ and OMB shall develop a framework:

(A) Consistent with the model processes established under 42 U.S.C. 4370m-2, 23 U.S.C. 139, 33 U.S.C. 2348, the 2015 "Red Book" and CEQ guidance on efficient and timely environmental reviews under NEPA.

(B) The framework shall include guidance on the development of permitting timetables.

(C) CEQ and OMB shall also develop guidance for applying One Federal Decision whenever the lead agency is a State, tribal, or local agency exercising an assignment or delegation of an agency's NEPA responsibilities.

• **Permitting Timetable:** Lead Federal agency to develop a “Permitting Timetable” which will include milestones for applicable environmental reviews and authorizations and be publicly available.

• **Concurrence Points:** Lead Federal agency to request written concurrence from cooperating agencies for 1) Purpose and Need statement; 2) Range of Alternatives; and 3) Preferred Alternative.

• **Single EIS / Single ROD:** Agencies will work with the lead Federal agency to develop a single EIS and ROD, with exceptions when impracticable or inconsistent with applicable law.

• **Issue Resolution:** Agencies will elevate interagency issues or disputes that may cause delays to higher-level officials (including senior leadership) for timely resolution.

• **Two-Year Goal:** Agencies will seek to reduce the time it takes for each agency to complete environmental reviews and authorization decisions to an average of two years.

• **Preserves Statutory Authorities:** MOU designed to coordinate agency processes while fully preserving each agency’s statutory authority, independence, and ability to comply fully with NEPA and related statutes.
What the OFD MOU Does:
- Establishes a coordinated interagency approach for environmental reviews and authorization decisions for major infrastructure projects.
- Provides project sponsors/applicants with greater predictability in the form of a schedule for completing all such reviews and authorization decisions.
- Formalizes a collaborative process among the lead Federal agency and other agencies to jointly develop a single EIS and single ROD for major infrastructure projects.
- Encourages sponsors/applicants to engage with agencies early in the process.
- Sets forth an elevation process to address and resolve delays or disputes.
- Enhances consistency, transparency and accountability in the permitting process.

What the OFD MOU Does Not Do:
- Does not limit or affect agencies’ statutory authorities or responsibilities.
- Does not require agencies to perform actions beyond their statutory authorities.
- Does not predetermine the outcome of any environmental review or permitting decision.
- Does not prevent agencies from entering into additional interagency agreements as appropriate to carry out environmental reviews and make permitting decisions.
Sample Timeline for a Project Subject to EO 13807

1. **Publication of NOI**
   - 2 years*

2. **Formal scoping and preparation of the Draft EIS (DEIS)**
   - 14 months

3. **DEIS**
   - 8 months

4. **Public comment period and preparation of the Final EIS (FEIS)**

5. **FEIS**
   - 2 months

6. **Publication of ROD**

* The goal of 2 years in EO 13807 is an agency-wide average, not all projects are expected to meet this average.
CEQ will revise, modify or supplement its existing guidance regarding:

- Establishing, Applying, and Revising Categorical Exclusions under NEPA, with supporting information regarding established Categorical Exclusions;
- Preparing Environmental Assessments;
- Improving the Process for Preparing Efficient and Timely Environmental Reviews under NEPA;
- Appropriate Use of Mitigation and Monitoring and Appropriate Use of Mitigated Findings of No Significant Impact; and
- Environmental Collaboration and Conflict Resolution.
- Identify changes needed to update and clarify CEQ's NEPA regulations; and

- issue guidance to simplify and accelerate the NEPA process for infrastructure projects, including infrastructure-specific guidance to be compiled in a NEPA practitioners' handbook for infrastructure project proposals, to address public involvement, deference to the lead Federal agency, cumulative impacts analysis, sources of information, reliance on prior studies and on State, local and tribal analyses under NEPA.
• CEQ will convene an interagency Working Group of agency CERPOs and OMB to review the NEPA implementing regulations and other environmental review and authorization procedures and policies to:
  – identify impediments to the efficient and effective processing of environmental reviews and authorizations for infrastructure projects and to
  – identify agencies that require an action plan to address the identified impediments.
EIS Timelines in Context

DOE's NEPA Experience Overview

- EISs 0.4%
- EAs 1.6%
- CX determinations 98%

Causes of Delay for Infrastructure Projects

- Lack of Funding
- Low Priority
- Local Controversy
- Complex Project
- Resource Agency Review
- Change in Scope
- Perceived Risk of Litigation

From 2010 through 2016, DOE issued 37 NOIs to prepare an EIS, determined the need for 205 EAs, and completed more than 12,000 categorical exclusions (CX) determinations. *Chart courtesy of the Department of Energy, NEPA Lessons Learned Quarterly Report, September 28, 2017*
Average EIS Process Completion Time (NOI to ROD)
All EISs completed 2010-2017

The number of Final EISs issued each year (n) is shown at the top of each bar.
Average Completion Time
All EIIs Completed 2010 - 2017, by Federal Department

The number of EIIs (n) is shown at the top of each bar.

*Actions for which supplement EIIs were issued are not included, please see the note in section IV.
Mean EIS Completion Time by Stage
Final EISs published 2010-2017

<table>
<thead>
<tr>
<th>Stage</th>
<th>Percentage</th>
<th>Completion Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notice of Intent to Draft EIS</td>
<td>59%</td>
<td>2 years 8 months</td>
</tr>
<tr>
<td>Draft EIS to Final EIS</td>
<td>32%</td>
<td>1 year 5 months</td>
</tr>
<tr>
<td>Final EIS to Record of Decision</td>
<td>9%</td>
<td>5 months</td>
</tr>
<tr>
<td>Notice of Intent to Record of Decision</td>
<td></td>
<td>4 years 6 months</td>
</tr>
</tbody>
</table>
Hypothetical EIS Completion Time by Stage
Based on Two Year Average Goal

- **Notice of Intent to Draft EIS**: 58% - 1 year 2 months
- **Draft EIS to Final EIS**: 32% - 8 months
- **Final EIS to Record of Decision**: 9% - 2 months
- **Notice of Intent to Record of Decision**: 2 years

Number of Years

0 0.5 1 1.5 2
DON - Aug 2016 Environmental Planning Memo Reminders

- Early planning
  - For EAs – must document early planning discussions
  - For EISs – must convene a Project EIS Review Team (PERT) and include results in NOI package

- CATEX guidance

- Document preparation tools
  - Preparation guide, templates and region-specific language

- New training

- Metrics
New Policy/Agreements/Guidance to Support NEPA Efforts

- April 2018 NHPA Guidance Memo
  - Command leadership involvement
  - Early involvement by SMEs in helping shape projects
  - Ask the hard questions and seek to achieve a balanced outcome
  - Termination available but only if all other means exhausted

- ESA consultation agreement with USFWS Region 1
  - Outgrowth of difficult consultations in the Pacific AOR
  - Focus is on early coordination, consultation package requirements, role of conservation measures and terms & conditions, timing and dispute resolution

- ESA guiding principles
  - Recognition that we need to be consistent in how we execute Section 7 consultations
**Other Updates**

- OPNAV Instruction 5090 and Marine Corps Order 5090
  - Still working
- NEPA Process Automation & Management Support (PAMS) – USMC
- “Art of NEPA Project Management Course”
  - Finalizing slides; plan to roll out by the end of the CY
- NEPA webinars (quarterly) and blog updates
# National Environmental Policy Act (NEPA)

## Why?
- Required by law; not optional
- NEPA reviews:
  - Three levels of document complexity - Record of Categorical Exclusion (CATEX), Environmental Assessment (EA), or Environmental Impact Statement (EIS)
  - Serve as the "umbrella" process for compliance with other laws - e.g. the Endangered Species Act (ESA), National Historic Preservation Act (NHPA), Marine Mammal Protection Act (MMPA), etc.

## Scope & Cost
- On average, DON completes:
  - ~ 3,000 CATEXs (routine actions - building additions, easements)
  - ~ 70 EAs (no significant impact - MILCON projects)
  - ~ 5 EISs (significant impact - homebaseding, fleet training, major construction efforts)
- $30M/year; Average $10K/action
- Average time to complete
  - CATEXs - 2 weeks (98% of actions)
  - EAs - 18 months
  - EISs - 42 months

## How? (People & Processes)
- Improving Processes
  - Aug 2016 ASN Policy - NEPA - "smart from the start"
  - May 2018 ASN Policy - NHPA - "ask the hard questions"
  - Leg prop - (b) (5)
  - CATEX revisions - Avoid 20 EA's/year (save $4M)
  - Agreements - Consultation agreement with USFWS to streamline ESA consultations
  - Collaborating with resource agencies; building partnerships and streamlining approvals
  - Training NEPA practitioners ongoing

## NEPA Enables Readiness (Capability) – Key EISs Underway or Recently Completed
- [Redacted]

- Support MEB/MAGTF training at MCAGCC Twentynine Palms
- (b) (5)
EISs Supporting Readiness

MEB/MAGTF Training at MCAGCC Twentynine Palms, CA (recently completed)
- Original EIS completed in 2012
- FY13 NDAA significantly expanded training areas
- Completed Supplemental EIS completed in 2017
  - Allowed translocation of over 1,000 endangered desert tortoises out of training areas
  - Freed areas for unencumbered training

Enabling MEB/MAGTF Training!
Questions?

- Ted Boling
  - [b] (6)
  - [b] (6)
  - [b] (6)
  - [b] (6)
  - [b] (6)
  - [b] (6)
  - [b] (6)
  - [b] (6)
  - [b] (6)

@navy.mil
@usmc.mil
Slide Notes

Slide 4:
Fixing America’s Surface Transportation Act (FAST 41)
Federal Permitting Improvement Steering Council (FPISC)
Permitting Dashboard https://www.permits.performance.gov/
Chief Environmental Review and Permitting Officer (CERPO)

One Federal Decision
Interagency MOU – signed April 9, 2018
24 month timeline for EIS completion
Agency tracking performance
OMB and CEQ guidance M-18-13 date March 20, 2018

Improve Authorization and Environmental Review Processes through:
High level oversight for covered projects
Environmental review and authorization process improvement
Early consultation
Coordinated project plans
Public Dashboard tracking (project timetables)
Dispute resolution procedures
Recommended best practices and recommended performance schedules

Central Point of Contact for Entire Federal Process
Federal Permitting Improvement Steering Council (Deputy Secretary level) led by an Executive Director (ED) appointed by the President
Created agency Chief Environmental Review and Permitting Officers (CERPOs)

Clarifies or Changes Some Existing NEPA Provisions:
Reduces statute of limitations from 6 years to 2 years for covered projects (under the APA)
Encourages state participation and adoption/incorporation of state reviews
Allows formation of interstate compacts
Provides direction on determination of range of alternatives and treatment of preferred alternative

Slide 6:
18 in progress
1 planned
2 paused

15 Completed the Federal environmental review and authorization process
2 cancelled,
The following classifications of projects are contained within the Federal Infrastructure Permitting Dashboard:
Projects Identified as Covered Projects under Title 41 of the Fixing America's Surface Transportation (FAST) Act
DOT projects subject to Titles I, IX, and XI of FAST Act
Other projects Federal agencies would like to track and would seek to benefit from the various features such as transparency, predictability, accountability, and efficiency
Legacy projects, which are the infrastructure projects that were part of the original MAX.gov Permitting Dashboard
It is important to note that a project's inclusion on the Permitting Dashboard does not imply Federal endorsement of or support for the project or create a presumption that a covered project will be approved, favorably reviewed by any agency, or receive Federal funding. The inclusion of a project on the Permitting Dashboard may be reconsidered based on updated information related to, for example, a change in the scope of the Federal environmental review and authorization processes that apply to the project proposal.

Slide 20:
Timetable: Cooperating agencies to provide lead Federal agencies with key milestones for their authorizations.
Agencies will either (i) commit to the lead agency’s Permitting Timetable at the outset, or (ii) elevate and timely resolve any issues. Permitting Timetable should generally provide for a two-year time frame from NOI to prepare an EIS to ROD, as set forth below.

Concurrence points: Agencies to either (a) confirm their concurrence with the lead Federal agency’s request, or (b) elevate the issue internally within their agencies for timely resolution.
Alex,

Please find attached a red line and clean copy of your draft testimony.

Steven
From: "Schneider, Daniel J. EOP/CEQ" <"/o=exchange organization/ou=exchange administrative group (ytdboht23spdli)/cn=recipients/cn=70576341fcb44ab780c5f4d1ca218647-sc" >

To: "Pettigrew, Theresa L. EOP/CEQ" <(b) (6) __________________________________________>

Date: Mon, 18 Jun 2018 15:48:37 -0400


CEQ Webpage Link: https://www.whitehouse.gov/ceq/initiatives/

Dan Schneider
Associate Director for Communications
Council on Environmental Quality
Executive Office of the President

(b) (6) __________________________________________ (desk)
(b) (6) __________________________________________
www.whitehouse.gov/ceq
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
Council on Environmental Quality Requests Public Comment on Potential Revisions to Update National Environment Policy Act Regulations

On June 15, 2018, the Council on Environmental Quality (CEQ) submitted an Advance Notice of Proposed Rulemaking (ANPRM) titled “Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act” to the Federal Register for publication and public comment.

Background:

- On August 15, 2017, President Trump issued Executive Order 13807 which directed CEQ to develop an initial list of actions it would take to enhance and modernize the Federal environmental review and authorization process.
- In its initial list of actions published in the Federal Register on September 14, 2017, CEQ stated that it intended to review its 1978 regulations implementing the procedural requirements of the National Environmental Policy Act (NEPA) in order to identify potential updates and clarifications to those regulations.
- Over the past four decades, CEQ has issued numerous guidance documents but has amended its NEPA regulations substantively only once in 1986. Given the length of time since those regulations were issued, CEQ has determined it appropriate to solicit public comment on potential revisions to update the regulations.

Request for Public Comment:

- CEQ requests comment on potential revisions to update and clarify CEQ’s NEPA regulations. Comments should be submitted on or before July 20, 2018. To comment, go to https://www.regulations.gov and follow the online instructions for submitting comments to Docket ID No. CEQ-2018-0001.
- Through a series of 20 questions, CEQ is requesting comments on provisions of the regulations related to the NEPA process and the scope of NEPA review.

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**Next Steps:**

- Following the conclusion of the public comment period, CEQ will review the comments before taking any potential further action.
Hi, here are some draft questions. Also, in case it is useful, this backgrounder is her bio plus a compilation of press quotes about her nomination. As soon as I receive the letter of support from Mr. Connaughton I will send along.

Thank you,

Theresa

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Hey, Theresa!

Hope you had a great weekend. Just wondering what the ETA is for the Connaughton letter of support and committee questions for Mary.

Many thanks,

James R. Willson
 Majority Counsel
 U.S. Senate Committee on Environment & Public Works
 410 Dirksen Senate Office Building
 Washington, D.C. 20510
 202-224-6176
DRAFT QUESTIONS

GENERAL:
1. [Redacted]

INFRASTRUCTURE:
1. [Redacted]
DRAFT QUESTIONS

7. (b) (5)
   
NEPA:
1. (b) (5)
   
2. (b) (5)

OCEANS POLICY:
1. (b) (5)
   
EFFICIENT FEDERAL OPERATIONS:
1. (b) (5)
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, Yarden Mansoor, Steven Barnett, Tom Sharp
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
From: no-reply@fdms.gov
To: "Loyola, Mario A. EOP/CEQ" <b>(b)</b> >
Date: Mon, 20 Aug 2018 07:48:18 -0400

Notifications from Regulations.gov

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DOCKET: CEQ-2018-0001

NOTIFICATION NAME: CEQ-2018-0001-10398
FREQUENCY: Daily
EXPIRES: 08/17/2019
NUM DOCUMENTS: 194

DOCUMENT ID: CEQ-2018-0001-10398
DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Comment from Deborah Vari, N/A

DOCUMENT ID: CEQ-2018-0001-10399
DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018

DOCUMENT ID: CEQ-2018-0001-10400
DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Response to Request for Comments

DOCUMENT ID: CEQ-2018-0001-10401
DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: CEQ Request for Comments on Update on NEPA Regulations

DOCUMENT ID: CEQ-2018-0001-10402
DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Re: Comment period extension request for Advanced Notice of Proposed Rulemaking-Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy RIN: 0331-AA03

DOCUMENT ID: CEQ-2018-0001-10403
DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Personal comments regarding the Council on Environmental Quality's (CEQ's) Advanced Notice of Proposed Rulemaking, 40 CFR Parts 1500 through 1508, Docket No. CEQ-2018-0001, proposed update to regulations that implement the procedural provisions of the National Environmental Policy Act (NEPA)

DOCUMENT ID: CEQ-2018-0001-10404
DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Comment from Barbara Bell-Hawkey, N/A

DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Comment from Margaret Davies, NA

DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Comment from Roger Deal, NA

DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Comment from Sharon Wilson, NA

DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Comment from Michael Caputo, NA

DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Comment from Tana Canen, NA

DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Comment from Philip Ratcliff, NA

DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Comment from David Neevel, NA

DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Comment from Susann Beug, Northern Plains Resource Council

DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Comment from Peter Mickelsen, NA

DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Comment from Shelly Wallace, NA

DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Comment from Greg Johnson, NA
DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Comment from Elaine Woodriff, NA

DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Comment from Rickey Buttery, NA

DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Comment from Mark Wilkins, NEPA

DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Comment from Nancy McCoy, NA

DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Comment from Kelly Sweeney, NA

DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Comment from Mary Waitz, NA

DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Comment from Renee Mazurek, NA

DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Comment from Carole Cornet, NA

DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Comment from Kate Sherwood, N/A

DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Comment from David Fouche, N/A

DOCUMENT TYPE: PUBLIC SUBMISSIONS
POSTED DATE: 08/19/2018
DOCUMENT TITLE: Comment from Irene Francis, NA
All of your notifications for this e-mail address can be managed at the following link:
>https://www.regulations.gov/notifications?email=[email]&code=9f3b21c88083733<

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Permitting and Environmental Review Regulatory Reform Initiatives

SUMMARY
The paper identifies cross-cutting administrative and management reform proposals related to Title 41 of the Fast Act (FAST 41) and NEPA implementation that we believe would help the Administration achieve a number of its permitting reform and modernization goals. Some of the issues outlined have been discussed in the August 15th Executive Order on Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure (hereinafter EO 13807). These initiatives are intended to complement the initial list of actions that CEQ will take to enhance and modernize the Federal environmental review and authorization process consistent with Section 5(e)(1) of the E.O. Our goal in presenting these initiatives is to establish a robust, collaborative process to implement these and other permitting and environmental review reforms among the relevant agencies within the Executive Office of the President.

FAST-41 implementation issues

Encouraging “Early Alignment” of proposed infrastructure projects through informal consultation with project sponsors

Problem: Inconsistent and ambiguous guidance at the agency levels about whether the involvement of federal agencies in informal discussions before projects are publicly proposed or formal NEPA processes are initiated triggers FACA requirements.

Solution: Issue clear guidance applicable across the Executive Branch to enable and encourage such informal consultation across and among federal agencies prior to public scoping while preserving full public engagement in later formal procedures. Institute training and provide resources needed for agencies to understand and consistently implement FACA requirements while working to better engage with a broad range of interested groups – including other federal, state, local, and tribal agencies, NGOs and the public.

Action Agency: GSA, OMB, CEQ and FPISC

Incentivizing better interagency coordination

Problem: Federal agencies are inadequately incentivized to ensure robust interagency coordination in multi-agency processes required for infrastructure permitting and environmental reviews.

Solutions: Consistent with §4(a) of EO 13807: A) OMB should modify guidance to agencies regarding “High Priority Management Goals” to specifically prioritize better integration of permitting and environmental review activities; B) OMB should modify budget guidance to agencies and internal OMB budget review processes to use “cross-cutting budget” initiatives to

help identify relevant programs and integrate reviews of multiple agencies focused on infrastructure planning, permitting and environmental reviews and mitigation.

**Action Agency:** OMB, CEQ and FPISC

**Promoting a better functioning interagency dispute resolution process**

**Problem:** Interagency disputes that occur at late stages of environmental reviews are a major source of permitting delays. The dispute resolution process established in FAST-41 outlines a decision-making structure but the details for when and how Agencies are to engage within the dispute resolution process are unclear.

**Solution:** Consistent with §5(b)(ii) of EO 13807, through guidance and/or regulation, OMB, CEQ and the FPISC should provide clear direction to agencies regarding the functioning and implementation of the dispute resolution process in 42 USC §4370m(2)(C).

**Action Agency:** OMB, CEQ and FPISC

**Take full advantage of cost-sharing authorities**

**Problem:** The Federal Government is not taking full advantage of cost-share authorities to maximize efficiencies and fiscal burden sharing related to permitting and environmental reviews for infrastructure projects.

**Solution:** OMB should issue regulations applicable across Federal Agencies that implement the cost-recovery provisions of FAST-41, the Economy Act (31 U.S.C. 1535), and other applicable cost share/cost recovery provisions in federal law specific to federal agencies.

**Action Agency:** OMB, CEQ and FPISC

**Define the FPISC’s discretionary authority to designate covered projects**

**Problem:** The statutory eligibility criteria for “covered projects” under the FAST Act is both overly prescriptive with respect to the $200 million threshold and ambiguous with respect to additional qualifying criteria. As a result, the program has significantly underserved its potential, with many potentially qualifying projects unwilling or unable to avail themselves of the program’s benefits.

**Solution:** Clearly define the council’s discretionary authority to designate projects as “covered” even if under the $200 million threshold (see 42 USC 4370m (6)(A)(ii) and OMB Guidance para. 3.6).

**Action Agency:** OMB, CEQ and FPISC

**Make better use of the Federal Permitting Dashboard**

**Problem:** Few projects to date have been designated as FAST-41 “covered projects” on the Federal Permitting Dashboard (Dashboard). The lack of qualified covered projects to date has led to skepticism in the private sector regarding the program’s viability.
**Solution:** Through Executive Order or other Agency-wide directive, the Administration should set milestones for adding a significant number of new projects to the dashboard as soon as practicable. In addition, the Administration should consider mechanisms for stakeholder/project proponent input on additional qualifying criteria for the Dashboard.

**Action Agency:** OMB, CEQ, FPISC

**Expand the definition of “covered projects”**

**Problem:** Infrastructure projects that do not qualify as FAST-41 “covered projects” but require Federal permits and involve complex environmental reviews should also be included in the Administration’s infrastructure permitting reform efforts.

**Solution:** Guidance should be issued to agencies regarding procedures that standardize interagency consultation and coordination practices and tracking of decision making timelines for relevant for non-FAST-41 “covered projects.”

**Action Agency:** OMB, CEQ and FPISC

**Integrating state and local permitting authorities into FAST-41 planning and implementation**

**Problem:** State and local permitting authorities are not integrated into FAST-41 planning and implementation procedures. If these permitting authorities are not included in the FAST-41 policy process, significant unanticipated project delays can result for covered projects despite the benefits of improved Federal coordination.

**Solution:** In accordance with 42 U.S.C. § 4370m – 3(A), (B); 4(1)(A)(i) and 5(a), additional FAST-41 implementation guidance should include an opt-in provision for State and local permitting authorities to be included in the planning and implementation process for covered projects. Consider further utilizing “Service First” type authorities to facilitate sharing of facilities, personnel, and other resources in the context of multi-agency permitting and environmental reviews and extend the "Service First" concept to encompass involved local, state and tribal agencies as well as federal agencies.

**Action Agency:** OMB, CEQ and FPISC

**NEPA Reform Initiatives**

**Clarifying the applicability of Categorical Exclusions (CEs)**

**Problem:** CEs are under-utilized by agencies as a tool to streamline environmental reviews and by developers in designing their proposed project. Clearly identifying existing CE authorities would help improve utilization of CEs by both agencies and developers and encourage CE use for designated activities, helping action agencies and project proponents direct resources more efficiently. Project proponents are often unaware of opportunities to modify projects to qualify for CEs in lieu of more in-depth Environmental Assessments. With a fully complete list of available CEs, organized by both agency and type of activity, and available on the internet at a
single URL, developers can design their projects to take full advantage of CE's and agencies can more effectively leverage this tool to advance environmental reviews more efficiently.

**Solution:** CEQ should:
(1) Complete a comprehensive, federal government-wide compilation of existing CE's, arranged by both agency and project type, and available on the internet at a single URL with links to the full text of each CE.
(2) Encourage project proponents to take full advantage of the cost – and time – savings of utilizing existing CE's by, where possible, designing project proposals to fit within the framework specified for an existing CE.
(3) Identify redundancies and incompatible or conflicting CE's and recommend corrective actions to the agencies concerned. Greater consistency is needed in how agencies interpret CE's. Consider ways to expand the number and scope of their CE's and/or further encourage the use of CE's as appropriate and consistent with their legal authorities.

**Action Agency:** CEQ

**Expand the use of mechanisms for applicant funding of reviews**

**Problem:** Resource and personnel constraints among Federal permitting authorities can have significant impacts on the ability of these authorities to process NEPA environmental reviews in a timely manner.

**Solution:** CEQ should examine relevant legal authorities that would allow for project proponents to fund environmental reviews through accredited 3rd parties or agency designees. If supported by relevant legal authorities, CEQ should issue NEPA implementation guidance to agencies clarifying the conditions under which project proponents could utilize 3rd parties for environmental reviews and/or provide additional resources to be utilized by the agencies for environmental reviews. There are numerous examples of these types of arrangements that can serve as models for implementation.

**Action Agency:** CEQ

**Encourage use of programmatic EIS's**

**Problem:** The programmatic approach under NEPA has not been fully used for its intended purpose and, when used, it often has not fulfilled agency or stakeholder expectations with respect to process efficiencies or streamlined decision making.


**Action Agency:** CEQ
Encourage the use of “mitigated FONSIs”

**Problem:** Despite issuing guidance encouraging the use of mitigated FONSIs in 2011\(^2\), in practice, Agencies have defaulted to the use of EISs even if mitigation measures are developed by project proponents during the NEPA process to reduce the reasonably foreseeable environmental impacts of a major federal action to a level that is not significant. Mitigated FONSIs are an important tool for accelerating project approval, but they have been underutilized.

**Solution:** CEQ should issue new guidance that makes it clear that the use of mitigation may allow the agency to comply with NEPA’s procedural requirements by issuing an EA and a Finding of No Significant Impact (FONSI). This approach should be based on the agency’s commitment to ensure the mitigation that supports the FONSI is performed, thereby avoiding the need to prepare an EIS. CEQ should direct action agencies to update their existing NEPA guidance to encourage the use of mitigated FONSIs, provide direction on how to devise mitigation measures that will support defensible mitigated FONSIs, and outline requirements for insuring that mitigation measures are monitored and meet performance standards.

**Action Agency:** CEQ

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Sent from my iPhone

Begin forwarded message:

From: Laura Fertig <coleogyne@gmail.com>
Date: August 21, 2018 at 12:26:11 AM CDT
To: [Redacted]

Dear Mr. Boling,

I intended to submit comments on the proposal to amend NEPA. The deadline was 12:00am and I thought I had time until I realized that it was 12:00am EST, not PST. Your name was on the Regulations.gov site as someone to contact, so I'm writing in hopes that you will allow my comments to be considered despite the confusion over the deadline. They are below:

Ms. Mary Neumayr, Chief of Staff
Council on Environmental Quality
730 Jackson Place, N.W. Washington, D.C. 20503


Dear Ms. Neumayr,

As a former federal employee and a frequent commenter on government NEPA documents, I have always been an enthusiastic supporter of the National Environmental Policy Act. It holds agencies accountable and requires them to conduct analyses of their actions, something they did not always do before the law was enacted. Even more important, NEPA requires agencies to include the public in management of their public lands. As onerous as that is
for government staff who simply want to get on with doing whatever they like, public land belongs to everyone. We all have a right to know what the government is planning to do and what the environmental consequences will be.

That’s not to say the law can’t be improved. Over the decades, it’s become apparent that NEPA does need some adjusting. Below are some categories that could be improved.

1. Categorical Exclusions (CXs): The concept of Categorical Exclusions is being abused. These designations were intended for small-scale projects that inherently had little to no environmental effects. Lately, however, large-scale projects are being called CXs and the public has no opportunity to comment or express support or opposition to the proposal. For instance, the BLM’s Grand Staircase-Escalante National Monument conducted a 30,000 acre vegetation treatment project as a CX. This activity had many extensive environmental consequences that needed analysis, but the BLM refused to conduct them. CEQ needs to more clearly define when it’s appropriate to use a CX and when more analysis is required.

2. Public involvement: CEQ must retain current provisions for public involvement with regard to number and length of comment periods. The public often provides the agency with valuable information and analysis that it otherwise would not have. I have participated in writing comments for many Environmental Assessments and Environmental Impact Statements. They often present far more scientific documentation, citations, and analysis than the documents the agencies put forth for public review.

Researching and presenting this information is time-consuming and provides a great service to government agencies that don’t have the time or staff to produce such analysis themselves. For that reason, comment periods should not be truncated.

3. The CEQ should reinforce and strengthen requirements for an agency’s response to topics that the public brings up in its comments. Often, agencies offer nothing more than a perfunctory, formulaic response to relevant subjects that they did not analyze or analyzed incompletely. These comments deserve more thorough responses before they are rejected.

4. Definitions and Clarifications: Sometimes an agency will tier a
NEPA document or a Determination of NEPA adequacy to outdated information. There should be more specific direction on when it is appropriate to tier to an earlier document and when the information is simply too out of date. In another example from the BLM’s Grand Staircase-Escalante National Monument, staff conducted vegetation treatments on areas that were 15 years past the original NEPA. For such malleable resources as vegetation, which can change and degrade quickly under some circumstances, more recent NEPA analysis should be issued. Insisting on the best available, most current science and reasoned analysis should be instituted and enforced.

5. Streamlined Format: The typical NEPA organization with the Description of the Alternatives, Affected Environment, and Environmental Impacts together contain a lot of needless repetition. Surely there is a way to describe or analyze something once and then refer to that section of the document, but not repeat it, in other chapters.

6. Maps: Many EAs and even EISs are presented to the public without adequate maps. Most agencies have access to GIS specialists, at least in state or regional offices. Any updates to NEPA should include standards for clear maps showing the project area in detail on a topographical map(s). No more black and white copies of topo maps with the project area carelessly outlined in smudgy pencil or marker. This leads to public frustration and distrust, followed by less support for the proposed project.

7. Public notification: Virtually all government agencies have some kind of access to the internet. There is no reason, then, why NEPA projects can’t be posted on the planning websites for these agencies. Yet, many projects are only posted in hard copy on bulletin boards in agency offices and in obscure weekly newspapers. These regulations for public notification were developed before the internet was available. It’s reasonable to update the public notification process and require all projects to be consistently posted on-line in a timely fashion.

8. Enforceable timelines: The Grand Staircase-Escalate National Monument was supposed to have a plan for grazing management in place in 2003. It’s 2018 and only now is a draft available. This was not due to any deficit in NEPA. This shameful state of affairs came about due to a reluctance to change status quo management, and it’s untenable that it was allowed to continue for this long. It’s another
example of political influence taking precedence over good management.

9. Agency training and compliance: The CEQ must conduct a thorough and honest assessment how NEPA requirements are conducted on the ground. Many times the perceived burden of environmental review lies not with NEPA itself but with how it is implemented. The quality of the NEPA documents produced and the degree to which NEPA regulations have been implemented has been irregular and inconsistent over agencies and over time. Employees need to be shown that NEPA is not a burden preventing them from going about their business, but a valuable process for determining the best way to proceed with managing public lands and resources. Not having adequate funds is one reason for the disgruntled attitude some public employees have toward NEPA. While that is understandable, one reform that should be undertaken is better training and understanding of the value of NEPA.

10. Consistency in comment deadlines and comment submission formats: Deadlines for comments range from Close of Business to midnight and from PST to EST. Please make that consistent. Also, some field offices require lengthy comments to be submitted by post and won't accept email submissions. In this digital age, it should be standard practice to allow comments and substantiating material to be sent digitally.

While NEPA may need to be fine-tuned, this administration is not the one to accomplish this. It is clear that the current effort to reform NEPA is politically motivated and intended to weaken the provisions of the Act to pacify industry. Already, recent Trump administration changes in regulations to “improve efficiency” have resulted in shoddy documents produced in haste with inadequate analysis. This leads eventually to greater taxpayer expense when projects need to be re-done because critical information was not considered, or environmental damage was allowed to occur, or improperly-prepared documents lead to litigation by groups trying to protect resources.

The CEQ has responsibility for maintaining the integrity of this process. Any change to NEPA should be conducted by public employees with genuine concern for the intent of NEPA and its successful implementation (I know they exist). NEPA is a reflection of bedrock American values of public participation and environmental review, and it should not be dismantled or neutered at
the behest of politicians or corporations. “Streamlining” the process should not be a euphemism for gutting the law. Again, although public involvement can seem burdensome to agencies and the industry representatives who just want quick approval to do whatever they like, the inconvenient fact is that those lands belong to all Americans and everyone has a right to say what happens to them.

If there was a way to reform NEPA without political pressure, it should be done. In the absence of such a way, I urge you to allow NEPA to stand as it is until a sincere effort to improve it can be brought to bear in the future.

Thank you for your time.

Sincerely,

Laura Welp

Kanab, UT
CEQ NEPA Implementing Regulation Working Group

Meeting Minutes

Date: August 29, 2018

Time: 11:30 AM

Present: Mary Neumayr, Aaron Szabo, Ted Boling, Viktoria Scaled, Dan Schneider, Theresa Pettigrew, Mario Loyola, Michael Drummond, Katherine Smith, Yarden Mansoor, Steven Barnett, Tom Sharp
RE: Draft background for NPRM

From: *Mansoor, Yarden M. EOP/CEQ* <Privacy>
To: *Loyola, Mario A. EOP/CEQ* <Privacy>
Date: Tue, 04 Sep 2018 12:58:34 -0400
Attachments: Draft NPRM Background-History 2018-09-04 YM.docx (55.58 kB)

(b) (5)

By the way, I just noticed that all the pages are numbered 9. Here is a replacement with real page numbers.

From: Loyola, Mario A. EOP/CEQ
Sent: Tuesday, September 4, 2018 12:46 PM
To: Mansoor, Yarden M. EOP/CEQ <Privacy>
Subject: RE: Draft background for NPRM

Yardena thank you. (b) (5)

Mario Loyola
Associate Director, Regulatory Reform
White House Council on Environmental Quality

From: Mansoor, Yarden M. EOP/CEQ
Sent: Tuesday, September 4, 2018 12:27 PM
To: Loyola, Mario A. EOP/CEQ <Privacy>
Cc: Drummond, Michael R. EOP/CEQ <Privacy> Boling, Ted A. EOP/CEQ <Privacy>
Subject: Draft background for NPRM

Here is the draft responding to the task list item due today, for your review.

(b) (5)
Yardena Mansoor
Deputy Associate Director for NEPA
Council on Environmental Quality

Privacy / Privacy
Federal NEPA Contacts Meeting

Where: Privacy Privacy (b) (6)

When: Thu Sep 27 13:00:00 2018 (America/New_York)

Until: Thu Sep 27 14:30:00 2018 (America/New_York)

Organiser: "Drummond, Michael R. EOP/CEQ" <o=exchange organization/ou=exchange administrative group (flydbdhf23spdtl)/cn=recipients/cn=a0b62c0a5454e6fb7a1be504b7d284a-dr>

Required Attendees: "Drummond, Michael R. EOP/CEQ" <Privacy FN-CEQ-NEPA <Privacy Privacy>


CEQ will host the Fall Meeting of the Federal NEPA Contacts via webinar on Thursday, September 20 from 1:00pm – 2:30pm EDT.

Conference number and webinar URL are provided below. An agenda will be provided in advance of the meeting along with a PDF of the webinar slides for those unable to join the webinar.

Audio Conference Details:
Conference Number (Toll Free): Privacy
Participant Code: Privacy

To join the meeting:
(b) (6)

If you have never attended an Adobe Connect meeting before:

Test your connection: https://meet.gsa.gov/common/help/en/support/meeting_test.htm

Get a quick overview: http://www.adobe.com/products/acobeconnect.html
Federal NEPA Contacts Webinar

Thursday, September 20, 2018
1:00 - 2:30 PM

AGENDA

1:00 Welcome

1:05 Update on CEQ NEPA Regulations Advance Notice of Proposed Rulemaking
  • Ted Boling, CEQ

1:20 Categorical Exclusion List
  • Michelle Lennox, NOAA

1:30 NEPA Timelines and One Federal Decision
  • Michael Drummond, CEQ

1:45 EPA Update
  • Rob Tomiak or Kelly Knight, EPA

2:00 13807 Implementation Update
  • CEQ

2:10 Looking Ahead: NEPA 50th Anniversary
  • Ted Boling, CEQ

2:20 Questions / Discussion
CEQ’s NEPA Implementing Regulations Working Group

AGENDA

September 6, 2018, 1:00 – 2:00PM
Federal NEPA Contacts Webinar

Thursday, September 20, 2018
1:00 - 2:30 PM

AGENDA

1:00 Welcome

1:05 Update on CEQ NEPA Regulations Advance Notice of Proposed Rulemaking
   • Ted Boling, CEQ

1:20 Categorical Exclusions
   • Ron Lamb, USMC

1:30 NEPA Timelines and One Federal Decision
   • Michael Drummond, CEQ

1:45 EPA Update
   • Rob Tomiak or Kelly Knight, EPA

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2:20 Questions / Discussion
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.
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Council on Environmental Quality Requests Public Comment on Potential Revisions to Update National Environment Policy Act Regulations

On June 15, 2018, the Council on Environmental Quality (CEQ) submitted an Advance Notice of Proposed Rulemaking (ANPRM) titled “Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act” to the Federal Register for publication and public comment.

Background:

- On August 15, 2017, President Trump issued Executive Order 13807 which directed CEQ to develop an initial list of actions it would take to enhance and modernize the Federal environmental review and authorization process.
- In its initial list of actions published in the Federal Register on September 14, 2017, CEQ stated that it intended to review its 1978 regulations implementing the procedural requirements of the National Environmental Policy Act (NEPA) in order to identify potential updates and clarifications to those regulations.
- Over the past four decades, CEQ has issued numerous guidance documents but has amended its NEPA regulations substantively only once in 1986. Given the length of time since those regulations were issued, CEQ has determined it appropriate to solicit public comment on potential revisions to update the regulations.

Request for Public Comment:

- CEQ requests comment on potential revisions to update and clarify CEQ’s NEPA regulations. Comments should be submitted on or before 30 days after the date of publication in the Federal Register. To comment, go to https://www.regulations.gov and follow the online instructions for submitting comments to Docket ID No. CEQ-2018-0001.
- Through a series of 20 questions, CEQ is requesting comments on provisions of the regulations related to the NEPA process and the scope of NEPA review.

Next Steps:

- Following the conclusion of the public comment period, CEQ will review the comments before taking any potential further action.
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Edward Bolling
Director for the National Environmental Policy Act
Council on Environmental Quality
730 Jackson Place, N.W.
Washington, DC 20503

Re: Comment period extension request for Advanced Notice of Proposed Rulemaking—Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy RIN: 0331-AA03

Dear Mr. Bolling,

I am writing to request an extension of the comment period to at least 90 days for Council on Environmental Quality’s Advanced Notice of Proposed Rule Making (ANPRM) to update “Implementation of the Procedural Provisions” of National Environmental Policy Act (NEPA).

NEPA provides the public with an essential right of public participation and that is all the more vital in a process to revise the regulations that have guided public participation for decades. Given that CEQ’s process could fundamentally change how every single agency in the federal government considers the health and environmental impacts of federal decisions as well as public input under NEPA, I believe that a minimum of 90 days is necessary to provide me, and the public, the time to properly understand and meaningfully respond to the many questions outlined in the ANPRM.

Providing a nominal 30 days for comment is inadequate and will leave out important voices in shaping CEQ’S process. Thank you for your consideration of this request for at least 90 days to comment on this important ANPRM and issue.

Sincerely,

Dennis M Grzezinski
Law Office of Dennis M Grzezinski
1845 N. Farwell Avenue, Suite 202
Milwaukee, WI 53202
414 530-9200
dennislaw@gmail.com
null
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