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Summary of the Notice of Proposed Rulemaking:

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

85 Federal Register 1684-1730 (January 10, 2020)

<https://www.regulations.gov/document?D=CEQ-2019-0003-0001>



Overview

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- **Background on the National Environmental Policy Act (NEPA)**
- **EIS Duration and Length Data**
- **Overview of Executive Order 13807**
- **Goals of the rulemaking**
- **Prior public input**
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- **Public engagement**
- **How to comment**



NEPA Background

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CEQ NEPA Regulations

- CEQ promulgated its NEPA implementing regulations in 1978 and made one substantive change in 1986 (revised 40 CFR 1502.22 to replace worst case analysis with consideration of incomplete or unavailable information).
- Under the current CEQ regulations, there are three levels of environmental review to comply with NEPA: categorical exclusions (CEs), environmental assessments (EAs), and environmental impact statements (EISs).
 - Each year, agencies prepare approximately 170 EISs and 10,000 EAs, and apply CEs to approximately 100,000 actions.



NEPA Background

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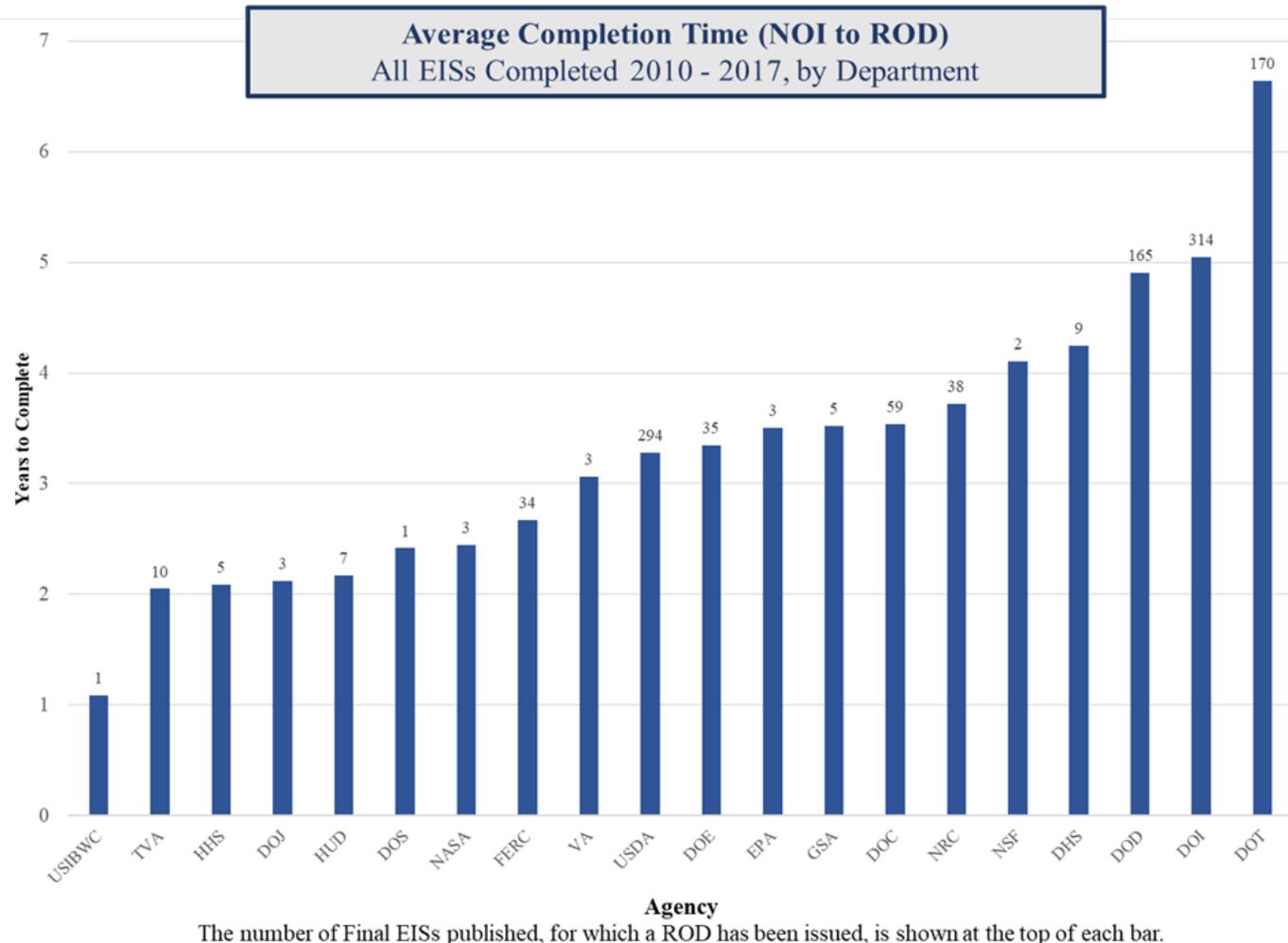
Duration and Length of Federal Highway EISs

- CEQ's current regulations require that an EIS normally be less than 150 pages or less than 300 pages for actions of unusual scope and complexity.
- CEQ found that the average length of a final EIS is **645 pages**, and the average time to conduct these NEPA reviews is **7.3 years**.
- Sources:
 - <https://ceq.doe.gov/nepa-practice/eis-length.html>
 - <https://ceq.doe.gov/nepa-practice/eis-timelines.html>



EIS Timeline Data

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EIS Timeline Data

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Agency	EISs Completed	Average NOI to Draft	Average Draft to Final	Average Final to ROD	Average NOI to ROD
Department of Transportation (DOT)					
Federal Aviation Administration (FAA)	8	5.51	1.87	0.35	7.72
Federal Highway Administration (FHWA)	114	4.04	2.87	0.38	7.30
Federal Railroad Administration (FRA)	14	3.16	1.57	0.43	5.16
Federal Transit Administration (FTA)	27	2.89	1.95	0.30	5.13
National Highway Traffic Safety Administration (NHTSA)	4	0.59	0.72	0.08	1.39
Surface Transportation Board (STB)	3	2.48	3.41	0.47	6.36



Executive Order 13807

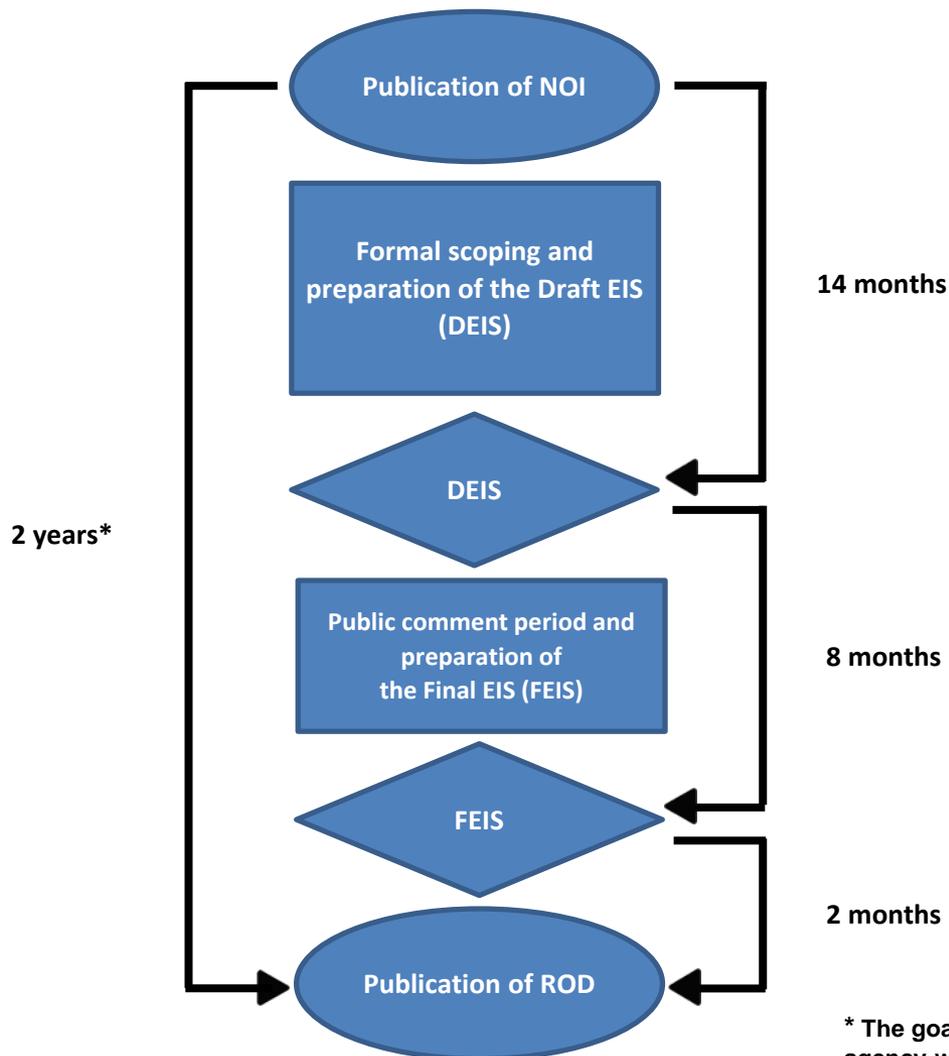
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- On August 15, 2017, President Trump issued E.O. 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*.
- Section 5(e)(i) directed CEQ to enhance and modernize the Federal environmental review and authorization process, including issuing such regulations as CEQ deems necessary to:
 - (1) Ensure **optimal interagency coordination** of environmental review and authorization decisions;
 - (2) Ensure that multi-agency environmental reviews and authorization decisions are conducted in a manner that is **concurrent, synchronized, timely, and efficient**;
 - (3) Provide for **use of prior Federal, State, Tribal, and local environmental studies, analysis, and decisions**; and
 - (4) Ensure that agencies apply NEPA in a manner that **reduces unnecessary burdens and delays**, including by using CEQ's authority to interpret NEPA to **simplify and accelerate** the NEPA review process.



Sample Timeline for a Project Subject to E.O. 13807

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* The goal of 2 years in EO 13807 is an agency-wide average, not all projects are expected to meet this average.



Prior Public Input

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- CEQ published an advance notice of proposed rulemaking, *Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act*, in the Federal Register for public comment. (83 FR 28591, June 20, 2018).
- CEQ received over 12,500 comments during the public comment period, which closed on August 20, 2018.
 - Comments are publically available in docket number CEQ-2018-001 on www.regulations.gov.



Rulemaking Goals

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- **Efficient, effective, and timely NEPA reviews.**
 - Modernize and clarify the regulations.
- **Reflect modern NEPA practice.**
 - Respond to numerous questions that have been raised over the past four decades by codifying guidance, case law, and agency practice.
- **Reduce paperwork and delays, and promote better decisions.**
 - Consistent with the goals of the 1978 regulations.



Proposed Changes

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Modernize, Simplify and Accelerate the NEPA Process

- Establish presumptive time limits for completion of environmental impact statements (EISs) of 2 years and environmental assessments (EAs) of 1 year.
- Specify presumptive page limits for EISs of 150 pages (300 for proposals of unusual scope or complexity) and 75 pages for EAs.
- Require joint schedules, a single EIS, and a single record of decision (ROD), where appropriate, for EISs involving multiple agencies.
- Strengthen role of the lead agency and require senior agency officials to timely resolve disputes that may result in delays.



Proposed Changes

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Clarify Terms, Application and Scope of NEPA Review

- Provide direction regarding the threshold consideration of whether NEPA applies to a particular action.
- Require earlier solicitation of input from the public to ensure informed decision-making by Federal agencies.
- Require comments to be specific and timely submitted to ensure their consideration.
- Require agencies to summarize all alternatives, analyses, and information submitted by commenters and to certify consideration of such information in the ROD.
- Define the term “reasonable alternatives” to provide that alternatives must be technically and economically feasible.



Proposed Changes

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Clarify Terms, Application and Scope of NEPA Review

- Simplify the definition of environmental “effects” and clarify that effects must be reasonably foreseeable and require a reasonably close causal relationship to the proposed action, consistent with Supreme Court case law.
 - Focus on considering whether an effect is caused by the proposed action rather than on categorizing the type of effect as direct, indirect, or cumulative.
 - CEQ does not propose to address a single type of effect in the regulations. CEQ invites comments on whether it should codify any aspects of its proposed GHG guidance in the regulation.
- Clarify “major Federal action” does not include non-discretionary decisions and non-Federal projects with minimal Federal funding or involvement.



Proposed Changes

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Reduce Unnecessary Burdens and Delays

- Facilitate use of efficient reviews.
 - Allow agencies to adopt another agency's categorical exclusion (CE) determination and establish processes in agency NEPA procedures for adopting another agency's CEs.
 - Expressly permit use of mitigated findings of no significant impacts (FONSI).
- Allow applicants/contractors to assume a greater role in preparing EISs under the supervision of an agency.
- Allow certain activities to proceed while environmental reviews are pending.



Proposed Changes

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Enhance Public Participation

- For actions requiring an EIS, CEQ proposes to require agencies to solicit comments in the notice of intent to prepare the EIS.
 - This solicitation would request comment on potential alternatives and impacts and identification of relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment.
- Agencies are given the flexibility to design and customize public involvement.
- Promote use of modern technologies to expand information sharing and enhance public involvement, including increasing the availability of online information.



Proposed Changes

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Enhance Coordination with States, Tribes, and Localities

- Reduce duplication by allowing agencies to use documents required by other statutes or prepared by State, Tribal, and local agencies.
- Ensure consultation with affected Tribal governments and agencies.
- Eliminate the provisions in the current regulations that limit Tribal interest to reservations.



Public Engagement

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- **Two public hearings on the proposed rule:**
 - February 11, 2020 in Denver, CO
 - February 25, 2020 in Washington, DC
- **Additional details concerning the hearings and other public engagement available at www.nepa.gov and www.whitehouse.gov/ceq.**



How to Comment

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- CEQ requests public comment on the proposed rule. Submit comments on or before **March 10, 2020**.
- You may submit comments via any of the following methods:
 - Online or document upload: www.regulations.gov, docket number CEQ-2019-0003
 - By Fax: (202) 456-6546
 - By mail: Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503
Attn: Docket No. CEQ-2019-0003