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)

Overview

• 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
• Summary of proposed rule
• Public engagement
• How to comment
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.
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:
EIS Timeline Data

Average Completion Time (NOI to ROD)
All EISs Completed 2010 - 2017, by Department

The number of Final EISs published, for which a ROD has been issued, is shown at the top of each bar.
# EIS Timeline Data

<table>
<thead>
<tr>
<th>Agency</th>
<th>EISs Completed</th>
<th>Average NOI to Draft</th>
<th>Average Draft to Final</th>
<th>Average Final to ROD</th>
<th>Average NOI to ROD</th>
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<tbody>
<tr>
<td>Department of Transportation (DOT)</td>
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<td></td>
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<tr>
<td>Federal Aviation Administration (FAA)</td>
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Executive Order 13807


• 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

**Publication of NOI**

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

**DEIS**

**Public comment period and preparation of the Final EIS (FEIS)**
8 months

**FEIS**

**Publication of ROD**
2 months

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

2 years*

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Prior Public Input


• 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](http://www.regulations.gov).
Rulemaking Goals

• 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

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

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

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

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.
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

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

• 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

• 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