Key Changes to CEQ’s NEPA Implementing Regulations

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Overview

- Brief NEPA introduction
- Overview of key changes under the 2020 Revised NEPA regulations
- Recent developments under the Biden-Harris Administration
National Environmental Policy Act of 1969

- Establishes National Environmental Policy
- Directs federal agencies to prepare publicly available "detailed statement" with every proposal for legislation or major Federal action significantly affecting the quality of the human environment (Section 102(2)(c))
- Establishes Procedures for:
  - Informed decision-making
  - Interdisciplinary/multi-agency approach
  - Public process
  - Opportunity for stakeholder/interested party involvement
- Creates the Council on Environmental Quality
Council on Environmental Quality

- Executive Office of the President
- Responsible for overseeing Federal efforts to comply with NEPA
- Develops Guidance
- Resolves Disputes between Federal Agencies
- Developed Implementing Regulations ("Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act", 40 CFR Parts 1500-1508)
NEPA Process

Proposed Agency Action

- Categorical Exclusion?
  - NO
  - Significant impact
    - Environmental Impact Statement (EIS)
      - Notice of Intent (NOI)
      - Scoping Process
      - Draft EIS
      - Agency and Public Review
      - Final EIS
      - Record of Decision (ROD)
  - No significant impact
    - Finding of No Significant Impact (FONSI)

- YES

Implementation of Agency Action
EPA’s Role in NEPA

- Review and comment publicly on EISs produced by other Federal agencies
- Serve as Cooperating Agency
- Prepare its own NEPA documents for compliance
- Filing responsibilities for EISs and publish Notices of Availability in the Federal Register
  - EISs and EPA comment letters can be found here: https://cdxnodengn.epa.gov/cdx-enepa-II/public/action/eis/search
NEPA Limitations

- Applies only to Federal actions
- Imposes procedural, not substantive, requirements
- Offers transparency in decision-making and input from the public, but final decision is by lead agency
- NEPA has no penalty or enforcement provision
Overview of key changes under the 2020 Revised NEPA Regulations
2020 Regulations: *Accelerate the NEPA Process*

- **Time limits:**
  - Two years for EISs
  - One year EAs

- **Page limits:**
  - EISs limited to 150 pages, 300 pages for unusually complex EISs
  - EAs limited to 75 pages
2020 Regulations: *Revised Definition of Effects*

- Revises the definition of effects by removing the terms “direct, indirect, and cumulative”

- Environmental effects are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives.

- May include effects that are later in time or farther removed in distance from the proposed action or alternatives.
2020 Regulations: Reduced Criteria of Significance

- Revises the definition of intensity/degree (significance) to 4 criteria:
  - Short- and long-term effects
  - Beneficial and adverse effects
  - Effects on public health and safety
  - Effects that would violate Federal, State, Tribal, or local law protecting the environment

- Criteria removed:
  - Unique characteristics
  - Level of controversy
  - Highly uncertain/unique or unknown risks
  - Establishes precedence
  - Cumulatively significant
2020 Regulations: NEPA “Threshold Analysis”

- New threshold analysis redefining if NEPA applies:
  - Is it inconsistent with Congressional intent expressed in another statute?
  - Is it a “major Federal action”?
  - Is it in whole, or in part, a non-discretionary action for which the agency lacks authority to consider environmental effects as part of its decision-making process? and
  - Is another statute functionally equivalent?
2020 Regulations:

Stakeholder Input and Modernized Outreach

- “Tribes” added as stakeholder throughout regulations
- Require earlier solicitation of input from the public
- Outreach and documentation modernized
Recent NEPA developments under the Biden-Harris Administration
Recent NEPA developments under the Biden-Harris Administration

- Recent Executive Orders
- Department of the Interior news: Secretary Haaland issues Secretarial Orders 3399 and 3398
  - SO 3399: highlights importance of addressing climate change, environmental justice, and NEPA analyses
  - SO 3398: rescinds various orders issued during the Trump Administration, including DOI streamlining efforts
Recent NEPA developments under the Biden-Harris Administration – What’s next?

- CEQ currently reconsidering the 2020 Regulations, which could involve repealing or amending it
  - Brenda Mallory recently confirmed as CEQ Chair

- 2020 Regulations remain in effect and are currently being challenged
Thank you!

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