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Final Rule: Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act

85 Federal Register 43304-43376 (July 16, 2020)

<https://www.regulations.gov/document?D=CEQ-2019-0003-720632>

August 2020



Overview

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- National Environmental Policy Act (NEPA) Background
- EIS Timeline and Page Count Data, Example: FHWA
- Overview of Executive Order 13807
- Prior Public Input
- Summary of Final Rule



NEPA Background

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- NEPA was signed into law in 1970, and established the Council on Environmental Quality (CEQ).
- NEPA is a procedural statute that requires Federal agencies to review and consider the significant environmental consequences of their proposed actions and inform the public about their decision making.
- NEPA can apply to a broad range of federally funded or approved projects and activities, from the construction of highways, bridges and airports to conventional and renewable energy production and distribution facilities, water, telecommunications and other infrastructure projects, as well as management of national parks, forests and fisheries, and environmental restoration projects.



NEPA Background

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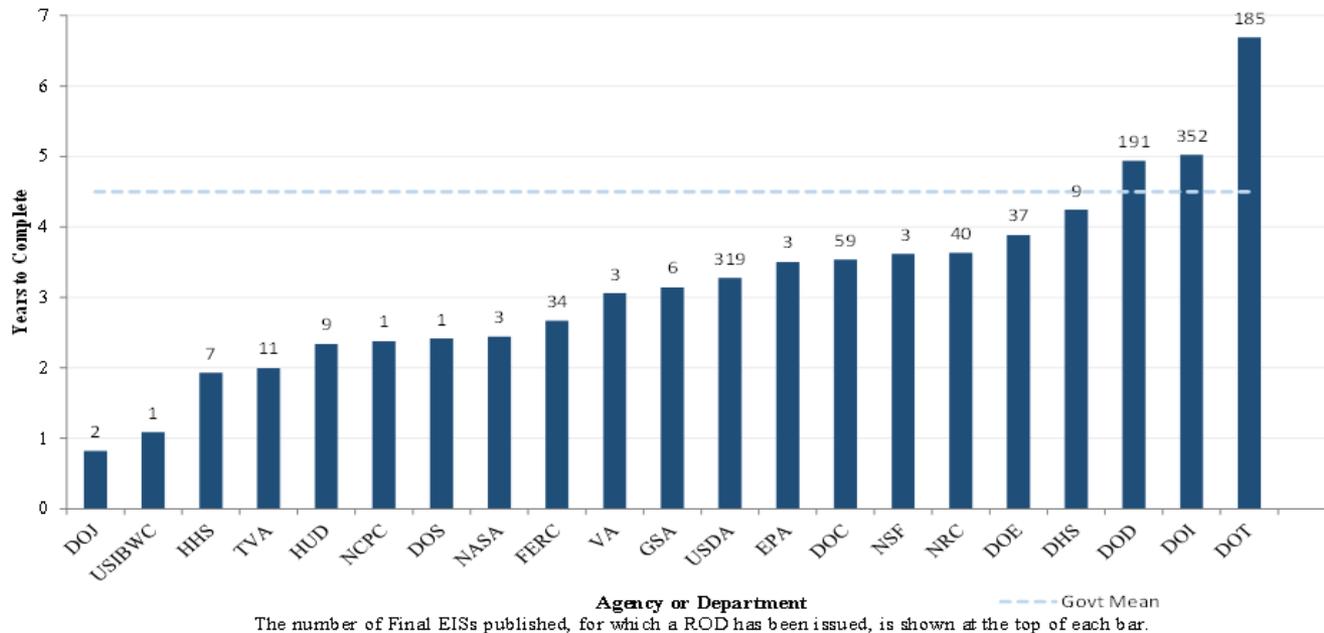
- CEQ promulgated its NEPA implementation regulations in 1978 and made one substantive change in 1986.
- On July 16, 2020, CEQ announced its final rule titled “Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act.”
- Under the 1978 CEQ regulations and the updated regulations, there are three levels of environmental review to comply: categorical exclusions (CEs), environmental assessments (EAs), and environmental impact statements (EISs).
 - Each year, agencies prepare approximately 170 EISs and over 10,000 EAs, and apply CEs to approximately 100,000 actions.



EIS Timeline Data

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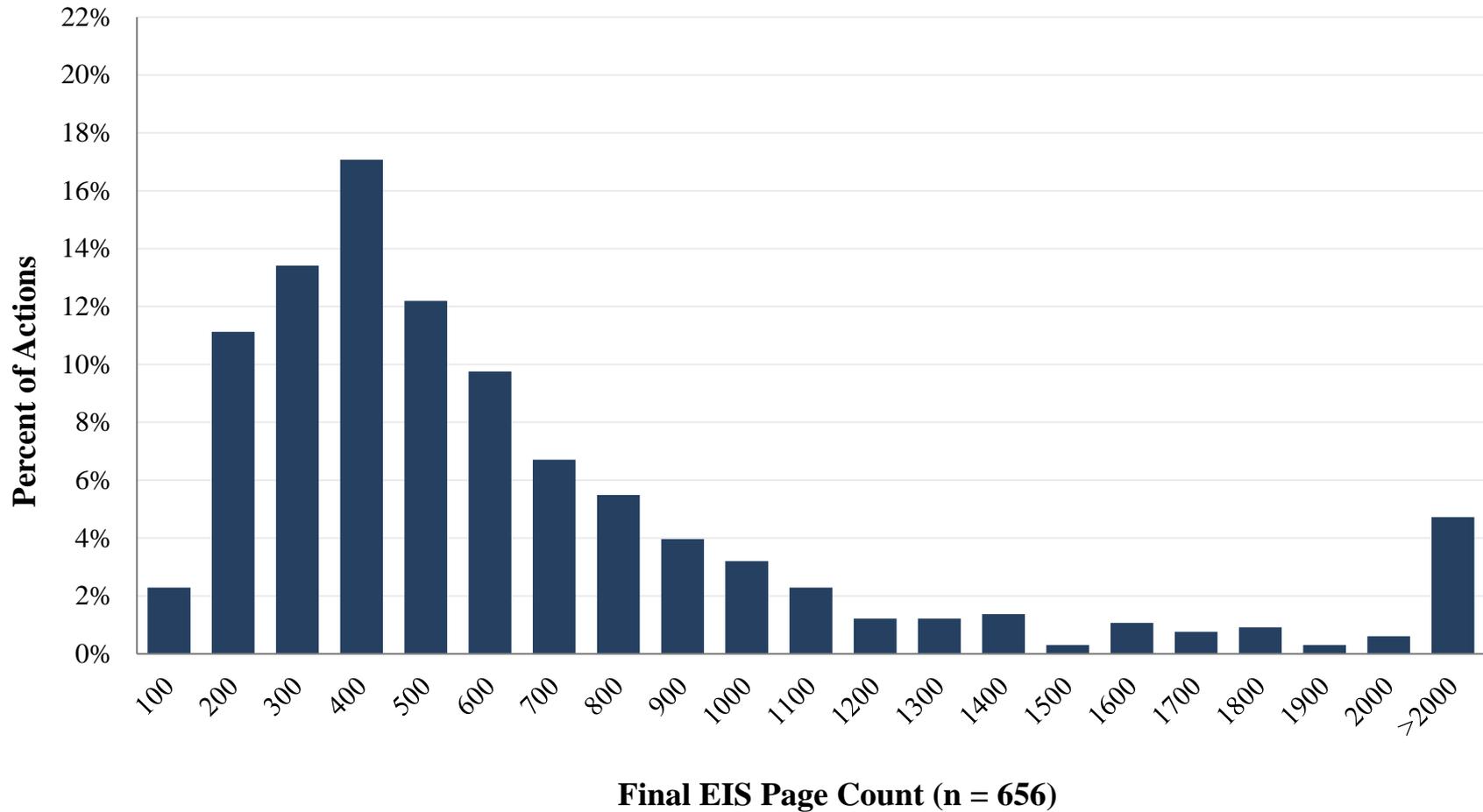
Average Completion Time (NOI to ROD)
All EISs Completed 2010 - 2018, by Department





EIS Page Count Data

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Example: Average Page Count and Timeline Data for FHWA EISs

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- CEQ's 1978 regulations and guidance recommended an EIS normally be less than 150 pages, or 300 pages for actions of unusual scope and complexity, and the timeline for an EIS, even for a complex project, should not exceed 1 year.
- CEQ found that the average length of a final EIS conducted by the Federal Highway Administration (FHWA) is **742 pages**, and the average time to conduct these NEPA reviews is **7.37 years**.
- Sources:
 - <https://ceq.doe.gov/nepa-practice/eis-length.html>
 - <https://ceq.doe.gov/nepa-practice/eis-timelines.html>



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:
 - Apply One Federal Decision policy to ensure **optimal interagency coordination** of environmental review and authorization decision;
 - Ensure that multi-agency environmental reviews and authorization decisions are conducted in a manner that is **concurrent, synchronized, timely, and efficient**;
 - Provide for **use of prior Federal, State, Tribal, and local environmental studies, analysis, and decisions**; and
 - 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.



Prior Public Input

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- CEQ published an advance notice of proposed rulemaking, *Update to the Regulations 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-2018-0001 on www.regulations.gov.



Prior Public Input

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- CEQ published a notice of proposed rulemaking, *Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act*, in the Federal Register for public comment. (85 FR 1684, January 10, 2020).
- CEQ received over **1.1 million** comments during the public comment period, which closed on March 10, 2020.
 - Comments are publically available in docket number CEQ-2019-0003 on www.regulations.gov.
 - CEQ's Response to Comments is available at www.whitehouse.gov/ceq/nepa-modernization/.



Key Elements of the Updated Regulations

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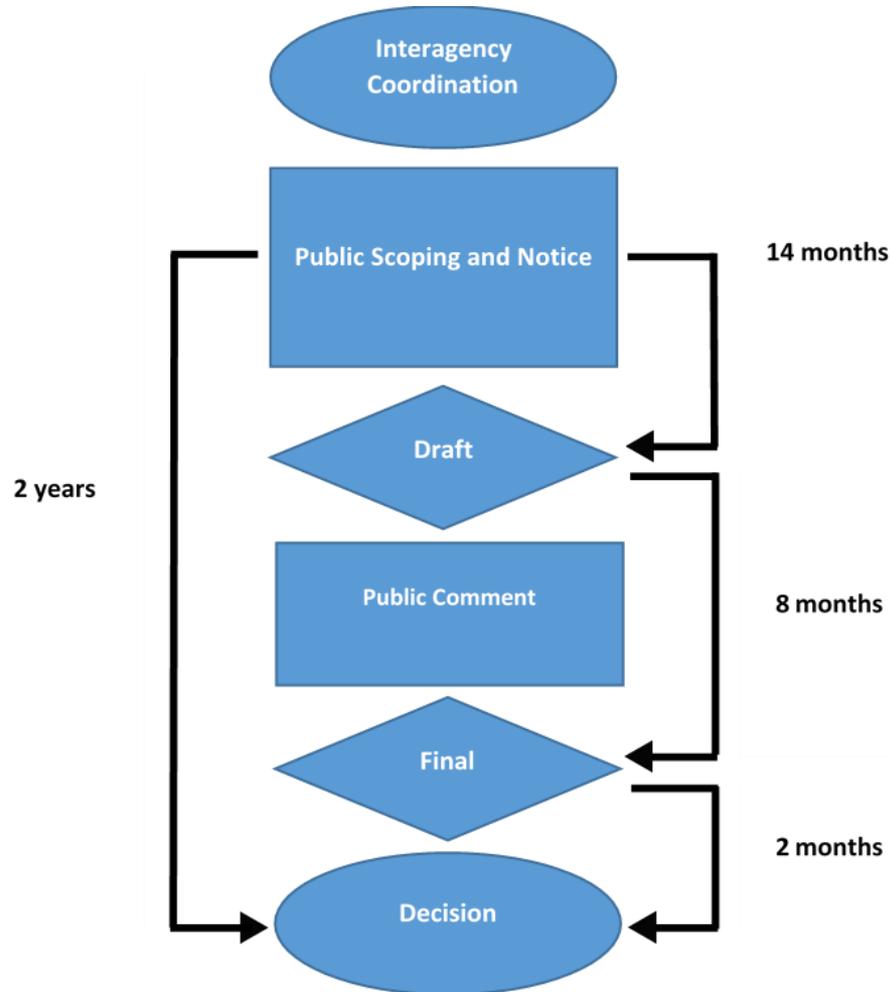
Improves Management of the NEPA Process

- Sets presumptive time limits for completion of EISs in 2 years and EAs in 1 year.
- Specifies presumptive page limits for EISs of 150 pages (300 for proposals of unusual scope or complexity) and 75 pages for EAs.
- Applies One Federal Decision policy for an EIS involving multiple agencies.
 - Requires joint schedules, a single EIS, and a single record of decision (ROD) for EISs involving multiple agencies.
- Strengthens role of the lead agency and requires senior agency officials' involvement to oversee compliance and resolve disputes.
- Allows applicants/contractors to assume a greater role in EIS preparation with appropriate disclosure of interests and with supervision and independent evaluation by the agency.



EIS Reviews Completed Within 2 Years

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Key Elements of the Updated Regulations

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Expands Public Involvement and Improves Coordination with States, Tribes, and Localities

- Requires agencies to provide more information to and solicit input from the public earlier in the NEPA process.
 - Requires more informative Notice of Intent (NOI) to the public when preparing EISs.
- Reduces duplication by facilitating use of documents prepared by State, Tribal, and local agencies to comply with NEPA.
- Enhances ability of Native Americans to participate and ensures appropriate consultation with affected Tribal governments and agencies.
- Eliminates provisions that limited consideration of Tribal interest to reservations.
- Promotes use of modern technologies for communication with the public about NEPA activities while considering potential barriers to access.



Key Elements of the Updated Regulations

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Provides New Efficiencies and Codifies Relevant Case Law

- Includes provisions to assist agencies in determining whether NEPA applies and the appropriate level of environmental review necessary.
- Requires consideration of **all** effects that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action.
- Aligns the definition of major Federal action with case law and excludes activities with minimal Federal funding or involvement.
- Directs agencies to analyze a reasonable range of technically and economically feasible alternatives.
- Reduces duplication by allowing use of procedures/documents required under other statutes that satisfy CEQ's NEPA regulations, as well as facilitating adoption where the actions are substantially the same, tiering, and use of CEs.



Key Elements of the Updated Regulations

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Ensures Meaningful and Effective Environmental Reviews

- Does not weaken any substantive environmental laws or regulations.
- Requires agencies to consider the affected environment, including environmental trends.
- Requires agencies to certify consideration of all submitted alternatives, information, and analyses.
- Clarifies that mitigation must avoid, minimize, or compensate for effects of the action.



Additional Information

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- The rulemaking documents, including **final rule, regulatory impact analysis, response to comments, and redlines** can be found at:
 - <https://www.regulations.gov/docket?D=CEQ-2019-0003>
- Additional information is available at:
 - www.nepa.gov
 - www.whitehouse.gov/ceq