

Fact Sheet on the Council on Environmental Quality's Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act

Effective Date: September 14, 2020

Introduction

On July 16th, 2020, the Council on Environmental Quality (CEQ) published in the Federal Register the Final Rule to update its regulations for the implementation of the National Environmental Policy Act (NEPA). The updates are effective for all NEPA reviews begun after September 14, 2020. For reviews that began prior to September 14, 2020, agencies may decide to apply the revised regulations or proceed under the 1978 regulations. Agencies should clearly indicate which procedures will be applied for each proposed action (see page 43340 in the Final Rule). The Division of Environmental Analysis (DEA) recommends indicating which regulations are being followed in a conspicuous location in your environmental document.

The regulations require that each federal agency develop or revise, as necessary, its proposed procedures to implement CEQ's updated NEPA regulations. As such, it is anticipated that the Federal Highway Administration (FHWA) will be issuing revisions to its implementing NEPA regulations found in Title 23, Code of Federal Regulations, Part 771 (23 CFR 771). This update will be subject to the federal rulemaking process. FHWA's current NEPA regulations will remain in effect until that time. In the event that there is a conflict between CEQ's NEPA regulations and the existing FHWA regulations, the CEQ regulations shall apply, unless there is a clear and fundamental conflict with the requirements of another statute.

The purpose of this Fact Sheet is to provide a high-level overview of the changes to the NEPA regulations, so that Districts starting new NEPA reviews can incorporate these changes as needed into their environmental review process. DEA will continue to update its forms, templates, and guidance documents, including the applicable chapters of the Standard Environmental Reference to reflect the updated regulations. Note that where no reference to the section number is provided below, it is because that section or topic has been eliminated from the updated regulations. A copy of the Final Rule as well as a "redline" version of the regulations can be found on the [CEQ website](#) for further reference.

General Changes to Language and Terminology:

- Replaces "circulate" or "circulation" with "publish" or "publication" throughout to reflect that most agencies now provide most documents in an electronic format by posting them online and using email or other forms of electronic communication to notify interested or affected parties.
- Adds the word "Tribal" to the phrase "State and local" throughout the regulations to ensure consultation with Tribal governments or agencies.

- Removes the terminology “context and intensity” for determining significance and now uses “*the potentially affected environment and degree of the effects of the action*” (Section [§] 1501.3).
- Replaces “controversy” with “dispute” and clarifies that “The controversial nature of a project is not relevant to assessing its significance.”

Changes to the Definition and Evaluation of Effects under NEPA:

- Removes references to “direct, indirect, and cumulative impacts.” The definition of cumulative impacts has been repealed. Effects or impacts now “means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives, including those effects that occur at the same time and place as the proposed action or alternatives and may include effects that are later in time or farther removed in distance from the proposed action or alternatives.” Additionally, the new regulations note that “a “but for” causal relationship is insufficient to make an agency responsible for a particular effect under NEPA. Effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain. Effects do not include those effects that the agency has no ability to prevent due to its limited statutory authority or would occur regardless of the proposed action” (§ 1508.1).
- Now explicitly allows for the combining of the “affected environment” and “environmental consequences” sections of environmental documents (§ 1502.15).

Changes to Scoping:

- Scoping may include work conducted prior to the publication of the notice of intent (NOI) (§ 1501.9).
- New requirements for the content of an NOI including a schedule for the decision-making process (see § 1501.9).

Changes to the Use of Categorical Exclusions (CE):

- Clarifies that the mere existence of “extraordinary circumstances” does not preclude the use of a CE as long as there are circumstances that can lessen the impact such as changing the design of the proposed project to avoid effects that create the extraordinary circumstances (§ 1501.4).
- Specifically allows a federal agency to “adopt” another agency’s determination that a CE applies to a proposed action if the action covered by the original CE determination and the adopting agency’s proposed action are substantially the same. The agency shall document the adoption (§ 1506.3). Note that this provision applies to a specific action.
- The new regulations also require a federal agency (such as FHWA) to establish a process that allows the agency to use a CE type listed in another agency’s NEPA procedures after consulting with that agency to ensure the use of the CE is appropriate. The process should ensure documentation of the consultation and

identify to the public those CE types the agency may use for its proposed actions. Then, the agency may apply the CE type to its proposed actions (§ 1507.3).

Changes to the Use of Environmental Assessments (EA) and Findings of No Significant Impact (FONSI):

- In addition to preparing an EA when the effects of a proposed action are unknown, specifically allows for the preparation of an EA when a project is not likely to have significant effects but is not categorically excluded (§ 1501.5).
- A FONSI must state the authority for any mitigation that the agency has adopted and any monitoring or enforcement provisions. If the agency finds no significant impacts based on mitigation, *the mitigated FONSI* shall state any enforceable mitigation requirements or commitments that will be undertaken to avoid significant impacts (§ 1501.6).
- Specifically allows a federal agency to “adopt” another agency’s EA in its FONSI for a proposed action if the action covered by the original EA and the adopting agency’s proposed action are substantially the same (§ 1506.3).

Changes to the Use of Environmental Impact Statements (EIS):

- An agency must now provide for the electronic submission of public comments (while this requirement technically only applies to EISs, because Caltrans routinely provides public review for EAs, electronic submission of public comments should be provided for EAs as well) (§ 1503.1).
- An EIS no longer needs to include “a list of agencies, organizations, and persons to whom copies of the statement are sent” or an index.
- If an appendix is prepared, it must be published with the EIS (§ 1502.19).
- A final EIS must now include on the cover sheet “...the estimated total cost to prepare both the draft and final EIS, including the costs of agency full-time equivalent (FTE) personnel hours, contractor costs, and other direct costs. If practicable and noted where not practicable, agencies also should include costs incurred by cooperating and participating agencies, applicants, and contractors” (§ 1502.11). Please note that for “integrated” documents where the document is addressing multiple statutory requirements in addition to NEPA (such as the California Environmental Quality Act and other federal and state laws and regulations), the cover sheet may indicate that the total estimated cost includes the costs associated with NEPA as well as these other statutory requirements. It is not necessary to track the NEPA costs separately.
- Generally requires a less rigorous alternatives analysis than the prior version of the regulations (§ 1502.14).
- The regulations add a new requirement for the consideration of “*submitted alternatives, information, and analyses.*” Specifically:
 - The NOI shall include a “request for identification of potential alternatives, information, and analyses relevant to the proposed action” (§ 1501.9).
 - The Draft EIS must include a summary that identifies all alternatives, information, and analyses submitted by State, Tribal, and local

governments and other public commenters during the scoping process for consideration by the lead and cooperating agencies in developing the EIS (§ 1502.17).

- The Draft EIS shall include an appendix of all comments (or summaries thereof where the response has been exceptionally voluminous), received during the scoping process that identified alternatives, information, and analyses for the agency's consideration (§ 1502.17).
- The Draft EIS must invite comments on the summary identifying all submitted alternatives, information, and analyses (§ 1502.17).
- The Final EIS shall include a summary that identifies all alternatives, information, and analyses submitted by State, Tribal, and local governments and other public commenters for consideration by the lead and cooperating agencies in developing the final EIS (§ 1502.17).
- Informed by the summary of the submitted alternatives, information, and analyses in the Final EIS, together with any other material in the record that he or she determines to be relevant, the decision maker shall certify in the Record of Decision that the agency has considered all of the alternatives, information, analyses, and objections submitted by State, Tribal, and local governments and public commenters for consideration by the lead and cooperating agencies in developing the EIS (§ 1505.2).
- Due to the ability to electronically publish environmental documents, it is no longer permitted to "circulate" a summary of the EIS in place of the EIS itself . Please note that this would not change the practice of sending summaries to the California State Clearinghouse, along with the electronic submittal.

Changes Related to Public Comments and Public Involvement:

- "To promote informed decision making, comments on an EIS or on a proposed action shall be as specific as possible, may address either the adequacy of the statement or the merits of the alternatives discussed or both, and shall provide as much detail as necessary to meaningfully participate and fully inform the agency of the commenter's position. Comments should explain why the issues raised are important to the consideration of potential environmental impacts and alternatives to the proposed action, as well as economic and employment impacts, and other impacts affecting the quality of the human environment. Comments should reference the corresponding section or page number of the draft EIS, propose specific changes to those parts of the statement, where possible, and include or describe the data sources and methodologies supporting the proposed changes" (§ 1503.3).
- Allows, except where another format is required by law, agencies to conduct public hearings and public meetings by means of electronic communication (§ 1506.6).
- To allow agencies and the public to efficiently and effectively access information about NEPA reviews, agencies shall provide for agency websites or other means to make available environmental documents, relevant notices, and other relevant information for use by agencies, applicants, and interested persons (§ 1507.4).

Changes to Coordination Requirements:

- To the extent possible, if a proposal will require action by more than one federal agency, the lead agency and cooperating agencies shall evaluate the proposal in a single EA or EIS and issue a joint FONSI or ROD (§ 1501.7).
- The lead agency shall determine the purpose and need and alternatives in consultation with any cooperating agency (§ 1501.7).
- The lead agency shall develop a schedule, setting milestones for all environmental reviews and authorizations required for implementation of the action, in consultation with any applicant and all joint lead, cooperating, and participating agencies, as soon as practicable (§ 1501.7).
- If the lead agency anticipates that a milestone will be missed, it shall notify appropriate officials at the responsible agencies. As soon as practicable, the responsible agencies shall elevate the issue to the appropriate officials of the responsible agencies for timely resolution (§ 1501.7). Please note that “responsible agencies” in this section is presumed to refer to joint lead, cooperating, and participating agencies.
- Allows Tribal governments or agencies to serve as a cooperating agency (removes the limitation that effects must be on a reservation) by agreement with the lead agency (§ 1501.8).
- Cooperating agencies must consult with the lead agency in developing the schedule, meet the schedule, and elevate, as soon as practicable, to the senior agency official of the lead agency any issues relating to purpose and need, alternatives, or other issues that may affect any agencies’ ability to meet the schedule (§ 1501.8).
- Cooperating agencies must meet the lead agency’s schedule for providing comments and limit its comments to those matters for which it has jurisdiction by law or special expertise with respect to any environmental issue consistent with § 1503.2 (§ 1501.8).

Page Limits and Time Limits:

- The text of an EA shall be no more than 75 pages, not including appendices (§ 1501.5).
- EAs shall be completed within one year which is measured from the date of the decision to prepare an EA to the publication of the EA or the FONSI (§ 1501.10).
- The text of an EIS shall be 150 pages or fewer and, for proposals of unusual scope or complexity, 300 pages or fewer, not including appendices (§ 1502.7).
- EISs shall be completed within two years which is measured from the date of the Notice of Intent (NOI) to the date the Record of Decision (ROD) is signed (§ 1501.10).