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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>



Overview

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- National Environmental Policy Act (NEPA) Background
- EIS Timeline and Page Count Data
- Rulemaking Timeline
- Summary of Final Rule



NEPA Background

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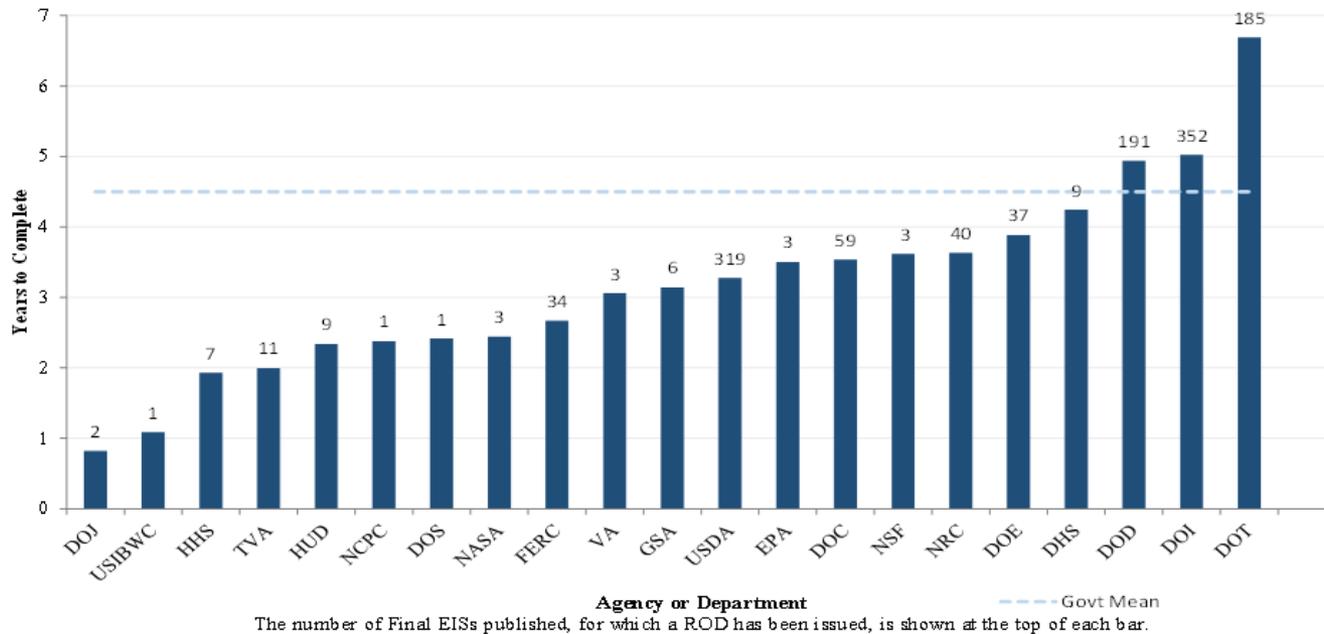
- NEPA was signed into law in 1970, and established the Council on Environmental Quality (CEQ).
- CEQ promulgated its NEPA implementation regulations in 1978 and made one substantive change in 1986.
- On August 15, 2017, President Trump issued E.O. 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*.



EIS Timeline Data

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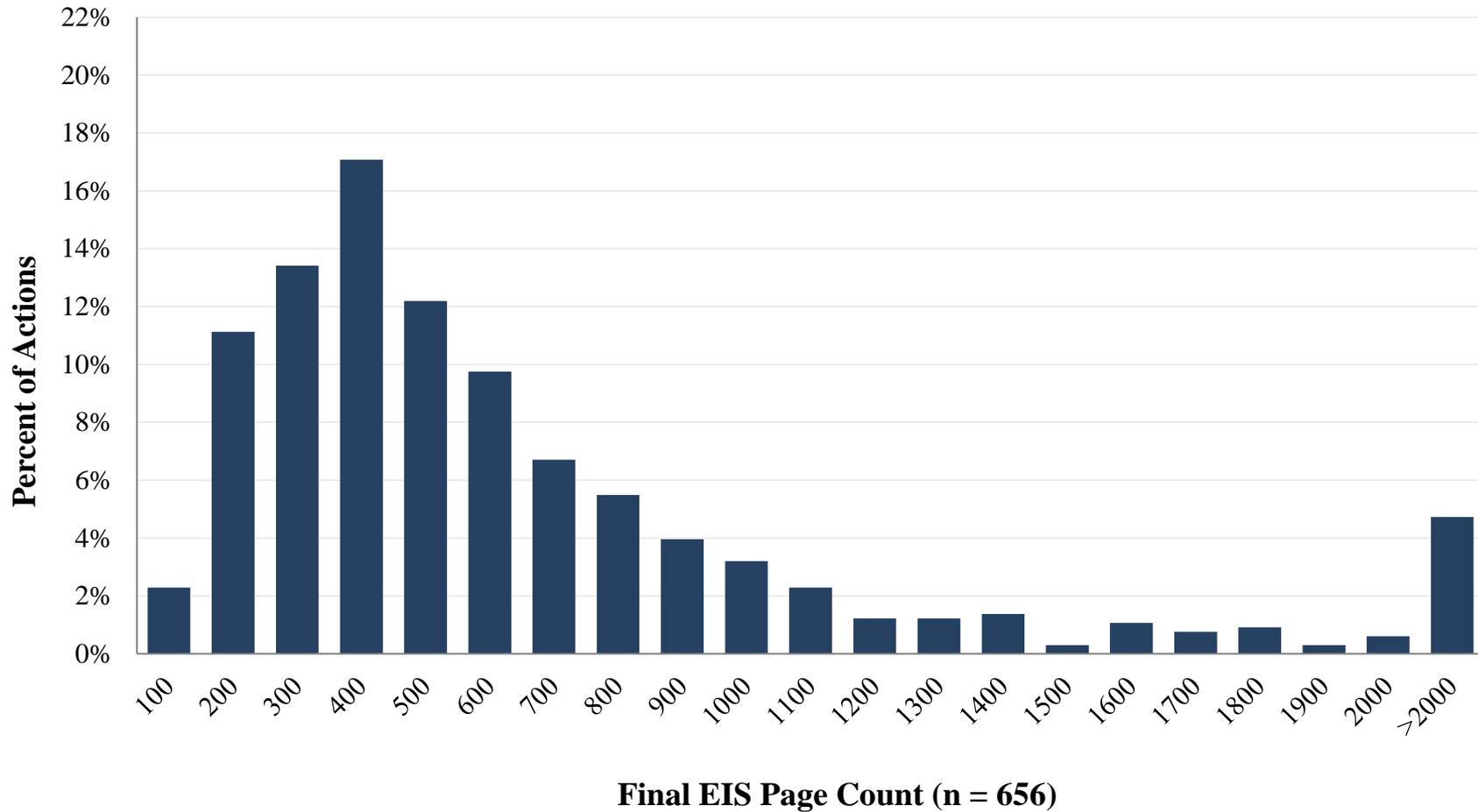
Average Completion Time (NOI to ROD)
All EISs Completed 2010 - 2018, by Department





EIS Page Count Data

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Rulemaking Timeline

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- On June 20, 2018, CEQ published an advance notice of proposed rulemaking in the Federal Register.
 - CEQ received over **12,500** comments during the public comment period, which closed on August 20, 2018.
- On January 10, 2020, CEQ published a notice of proposed rulemaking in the Federal Register.
 - CEQ received over **1.1 million** comments during the public comment period, which closed on March 10, 2020.
- On July 16, 2020, CEQ announced its final rule titled “Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act.”



Key Elements of the Updated Regulations

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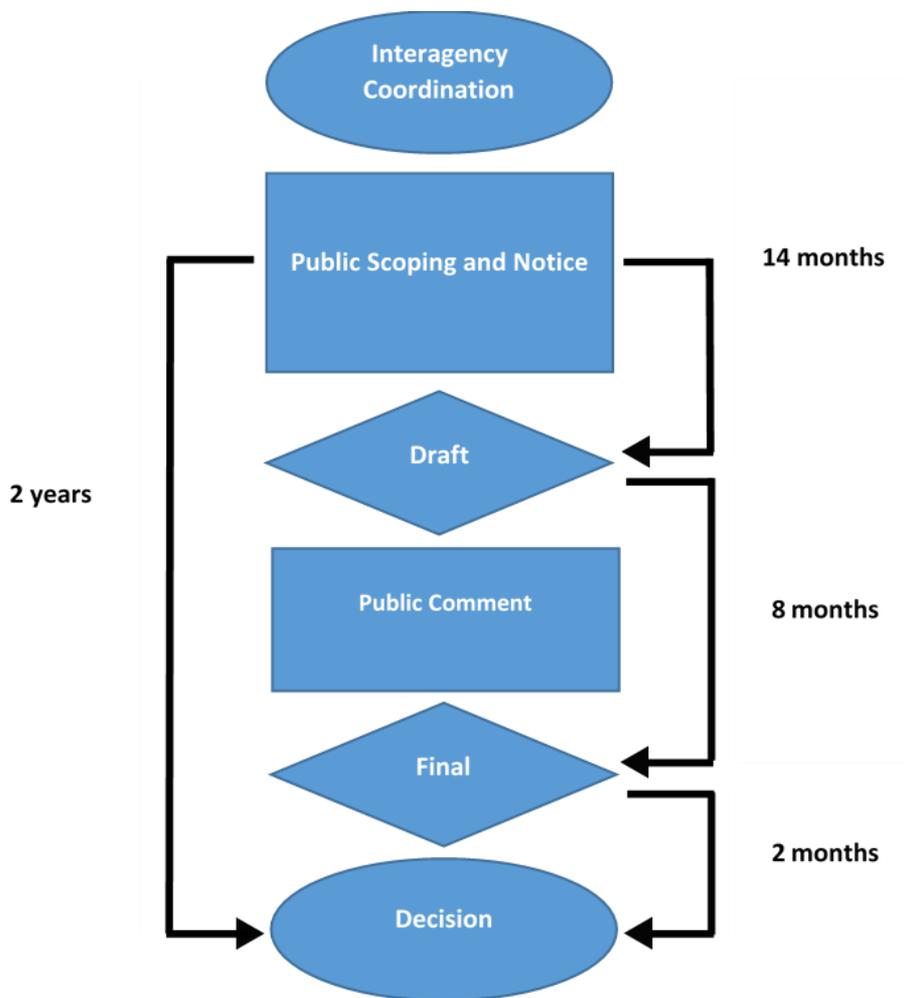
Improves Management of the NEPA Process

- 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