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2018-13246

DOCUMENT DETAILS

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AGENCY:

Council on Environmental Quality (CEQ).

ACTION:

Advance notice of proposed rulemaking.

SUMMARY:

The Council on Environmental Quality (CEQ) is considering updating its implementing regulations for the procedural provisions of the National Environmental Policy Act (NEPA). Over the past four decades, CEQ has issued numerous guidance documents but has amended its regulations substantively only once. Given the length of time since its NEPA implementing regulations were issued, CEQ solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process consistent with the national environmental policy stated in NEPA.

DATES:

Comments should be submitted on or before July 20, 2018.

ADDRESSES:

Submit your comments, identified by docket identification (ID) number CEQ-2018-0001 through the Federal eRulemaking portal at <https://www.regulations.gov> (<https://www.regulations.gov>). Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 (<https://api.fdsys.gov/link?collection=uscode&title=42&year=mostrecent§ion=4321&type=usc&link-type=html>) *et seq.*, was enacted in 1970. NEPA states that "it is the continuing policy of the Federal Government, in cooperation with

State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.” 42 U.S.C. 4331 (<https://api.fdsys.gov/link?collection=uscode&title=42&year=mostrecent§ion=4331&type=usc&link-type=html>)(a). NEPA also

established CEQ as an agency within the Executive Office of the President. 42 U.S.C. 4342 (<https://api.fdsys.gov/link?collection=uscode&title=42&year=mostrecent§ion=4342&type=usc&link-type=html>).

By Executive Order (E.O.) 11514, “Protection and Enhancement of Environmental Quality” (March 5, 1970), President Nixon directed CEQ in Section 3(h) to issue “guidelines to Federal agencies for the preparation of detailed statements on proposals for legislation and other Federal actions affecting the environment, as required by section 102(2)(C) of the Act.” CEQ published these guidelines in April of 1970 and revised them in 1973.

President Carter issued E.O. 11991 (May 24, 1977), “Relating to Protection and Enhancement of Environmental Quality,” which amended Section 3(h) of E.O. 11514 to direct CEQ to issue regulations providing uniform standards for the implementation of NEPA, and amended Section 2 of E.O. 11514 to require agency compliance with the CEQ regulations. CEQ promulgated its “Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act” (CEQ’s NEPA regulations) at 40 CFR parts 1500 (</select-citation/2018/06/20/40-CFR-1500>)-1508. 43 FR 55978 (November 29, 1978). Since that time, CEQ has amended its NEPA regulations substantively only once, to eliminate the “worst case” analysis requirement of 40 CFR 1502.22 (</select-citation/2018/06/20/40-CFR-1502.22>). 51 FR 15618 (April 25, 1986).

On August 15, 2017, President Trump issued E.O. 13807, (</executive-order/13807>) “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects.” 82 FR 40463 (</citation/82-FR-40463>) (August 24, 2017). Section 5(e) of E.O. 13807 (</executive-order/13807>) directed CEQ to develop an initial list of actions to enhance and modernize the Federal environmental review and authorization process. In response, CEQ published its initial list of actions pursuant to E.O. 13807 (</executive-order/13807>) and stated that it intends to review its existing NEPA regulations in order to identify changes needed to update and clarify these regulations. 82 FR 43226 (</citation/82-FR-43226>) (September 14, 2017).

II. Request for Comment

CEQ requests comments on potential revisions to update and clarify CEQ NEPA regulations. In particular, CEQ requests comments on the following specific aspects of these regulations, and requests that commenters include question numbers when providing responses. Where possible, please provide specific recommendations on additions, deletions, and modifications to the text of CEQ’s NEPA regulations and their justifications.

NEPA Process

1. Should CEQ’s NEPA regulations be revised to ensure that environmental reviews and authorization decisions involving multiple agencies are conducted in a manner that is concurrent, synchronized, timely, and efficient, and if so, how?

2. Should CEQ's NEPA regulations be revised to make the NEPA process more efficient by better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decisions, and if so, how?

3. Should CEQ's NEPA regulations be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, and if so, how?

Scope of NEPA Review

4. Should the provisions in CEQ's NEPA regulations that relate to the format and page length of NEPA documents and time limits for completion be revised, and if so, how?

5. Should CEQ's NEPA regulations be revised to provide greater clarity to ensure NEPA documents better focus on significant issues that are relevant and useful to decisionmakers and the public, and if so, how?

6. Should the provisions in CEQ's NEPA regulations relating to public involvement be revised to be more inclusive and efficient, and if so, how?

7. Should definitions of any key NEPA terms in CEQ's NEPA regulations, such as those listed below, be revised, and if so, how?

a. Major Federal Action;

b. Effects;

c. Cumulative Impact;

d. Significantly;

e. Scope; and

f. Other NEPA terms.

8. Should any new definitions of key NEPA terms, such as those noted below, be added, and if so, which terms?

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a. Alternatives;

b. Purpose and Need;

c. Reasonably Foreseeable;

d. Trivial Violation; and

e. Other NEPA terms.

9. Should the provisions in CEQ's NEPA regulations relating to any of the types of documents listed below be revised, and if so, how?

a. Notice of Intent;

b. Categorical Exclusions Documentation;

c. Environmental Assessments;

d. Findings of No Significant Impact;

e. Environmental Impact Statements;

f. Records of Decision; and

g. Supplements.

10. Should the provisions in CEQ's NEPA regulations relating to the timing of agency action be revised, and if so, how?

11. Should the provisions in CEQ's NEPA regulations relating to agency responsibility and the preparation of NEPA documents by contractors and project applicants be revised, and if so, how?

12. Should the provisions in CEQ's NEPA regulations relating to programmatic NEPA documents and tiering be revised, and if so, how?

13. Should the provisions in CEQ's NEPA regulations relating to the appropriate range of alternatives in NEPA reviews and which alternatives may be eliminated from detailed analysis be revised, and if so, how?

General

14. Are any provisions of the CEQ's NEPA regulations currently obsolete? If so, please provide specific recommendations on whether they should be modified, rescinded, or replaced.

15. Which provisions of the CEQ's NEPA regulations can be updated to reflect new technologies that can be used to make the process more efficient?

16. Are there additional ways CEQ's NEPA regulations should be revised to promote coordination of environmental review and authorization decisions, such as combining NEPA analysis and other decision documents, and if so, how?

17. Are there additional ways CEQ's NEPA regulations should be revised to improve the efficiency and effectiveness of the implementation of NEPA, and if so, how?

18. Are there ways in which the role of tribal governments in the NEPA process should be clarified in CEQ's NEPA regulations, and if so, how?

19. Are there additional ways CEQ's NEPA regulations should be revised to ensure that agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible, and if so, how?

20. Are there additional ways CEQ's NEPA regulations related to mitigation should be revised, and if so, how?

(Authority: 42 U.S.C. 4332 (<https://api.fdsys.gov/link?collection=uscode&title=42&year=mostrecent§ion=4332&type=usc&link-type=html>), 4342, 4344 and 40 CFR parts 1500 (/select-citation/2018/06/20/40-CFR-1500), 1501, 1502, 1503, 1505, 1506, 1507, and 1508)

III. Statutory and Executive Order Reviews

Under E.O. 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993), this is a "significant regulatory action." Accordingly, CEQ submitted this action to the Office of Management and Budget (OMB) for review under E.O. 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action. Because this action does not propose or impose any requirements, and instead seeks comments and suggestions for CEQ to consider in possibly developing a subsequent proposed rule, the various statutes and executive orders that normally apply to rulemaking do not apply in this case. If CEQ decides in the future to pursue a rulemaking, CEQ will address the statutes and executive orders applicable to that rulemaking at that time.

Mary B. Neumayr,

Chief of Staff, Council on Environmental Quality.

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