



**Council of Environmental Quality “Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act” Advanced Notice of Proposed Rulemaking  
Federal Register, Vol 83, No. 119 pp. 28591-28592  
August 20, 2018**

ACEC members – numbering more than 5,000 firms representing over 500,000 employees throughout the country – are engaged in a wide range of engineering works that advance the nation's economy and enhance and safeguard America's quality of life, including transportation, energy, and water infrastructure. These works allow Americans to drink clean water, enjoy a healthy life, take advantage of new technologies, and travel safely and efficiently.

ACEC recognizes that CEQ has opened the review of NEPA implementing regulations pursuant to Executive Order 13807 (EO). Under the EO, agencies are directed to ensure optimal interagency coordination of NEPA environmental review and authorization decisions, provide greater use of existing environmental information, analysis and decisions, and ensure agencies apply NEPA in a way that reduces unnecessary burdens and delays.

ACEC welcomes CEQ review of NEPA implementing regulations. Existing NEPA processes are robust and have not substantively changed in decades. However, any changes in NEPA implementation should be carefully considered to generate efficiencies and improved outcomes without undermining the core mandates of the statute.

Among federal environmental statutes, NEPA is unique in that it regulates how federal agencies make decisions rather than regulating specific environmental performance or practices such as a releases or emissions of pollutants into the air or water. NEPA provides a transparent decision-making process that also gives the public a voice in actions taken by the federal government. NEPA documentation has made federal actions more transparent and more accountable to the public, promoted better use of limited funding, and enabled better decisions, in addition to providing legal defensibility for agency actions.

ACEC is supportive of the NEPA concept and strongly believes infrastructure projects are improved by that process. However, we share many of CEQ's stated goals for this proposed rulemaking including the promotion of efficient, well informed, and timely federal decision making. ACEC addresses each of the twenty questions (Attachment A) posed within the Federal Register, but as a preliminary matter ACEC has identified three primary areas where CEQ could produce meaningful clarifications to improve project implementation:

Interagency Coordination: When projects are not eligible to be categorically excluded, the lead federal agency should be required to develop Memoranda of Understanding (MOU) with other federal, and where possible, state agencies which could impact later permitting stages.

- Under the MOU the agencies should be required to, at a minimum, identify concurrence points, substantive issues of their respective review, and joint schedule. This requirement would streamline project implementation. Concurrent and coordinated reviews should lead to timely decisions, which in turn saves time and money.
- Working meetings and an MOU with the lead federal agency, state agency, and project team should be required.
- CEQ should provide direction on, and monitor the effectiveness of, a standardized MOU focused on synchronizing environmental reviews – requiring federal agencies to update agency procedures to incorporate the principles of the One Federal Decision.

Interagency Consistency: Each federal agency further develops intra-agency policy for how it applies the NEPA process to its specific responsibilities or actions.

- Variations and discrepancies that unnecessarily complicate NEPA implementation have been commonly observed by NEPA practitioners working with multiple agencies and working at the same agency in different states or regions. A serious effort to achieve more inter- and intra-agency consistency would improve NEPA process.
- Additional communication and inter- and intra-agency training would produce greater consistency in application of policy.
- Clarifying definitions could produce substantial streamlining in many cases.
- Promotion of standardization within and among agencies should be undertaken where possible.

Technological Updates: Additional flexibility should be provided to account for current and future technological change.

- Public Outreach - Requirements written into policy such as mandating a specific number of printed copies may no longer be necessary, now that most individuals can access full documents from websites. The ability to engage and interact with the public has greatly increased with the use of online portals, mass teleconferences, and live-streaming services. These communications tools by themselves should not entirely replace public meetings and hearings, but NEPA implementation should be updated to gain the potential efficiencies achievable through modern communications technologies.
- Agency information sharing - Agencies should be encouraged to use modern communications tools to develop and share relevant existing and new databases of environmental and cultural resources and provide standardized evaluation and impact discussions.

For inquiries regarding these comments, please contact Lynn Schloesser at [lschloesser@acec.org](mailto:lschloesser@acec.org). Please find in Attachment A, the ACEC answers to the questions posed by CEQ in Docket No. CEQ-2018-0001.