

Key Changes to CEQ's NEPA Implementing Regulations

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Overview

- Brief NEPA introduction
- Overview of key changes under the 2020 Revised NEPA regulations
- Recent developments under the Biden-Harris Administration

NEPA

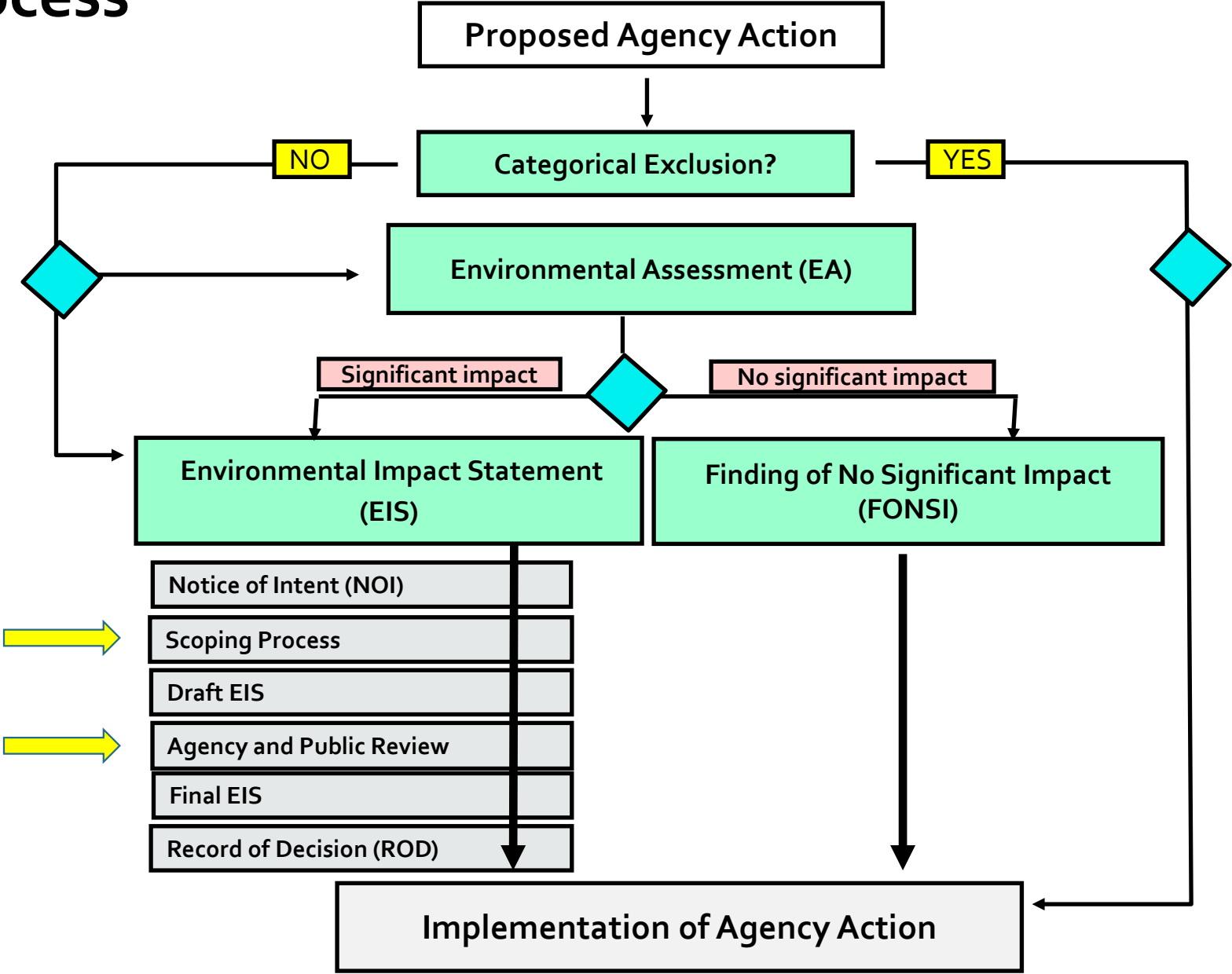
National Environmental Policy Act of 1969

- Establishes National Environmental Policy
- **Directs federal agencies to prepare publicly available "detailed statement" with every proposal for legislation or major Federal action significantly affecting the quality of the human environment** (Section 102(2)(c))
- Establishes Procedures for:
 - *Informed decision-making*
 - *Interdisciplinary/multi-agency approach*
 - *Public process*
 - *Opportunity for stakeholder/interested party involvement*
- Creates the Council on Environmental Quality

Council on Environmental Quality

- Executive Office of the President
- Responsible for overseeing Federal efforts to comply with NEPA
- Develops Guidance
- Resolves Disputes between Federal Agencies
- Developed Implementing Regulations (“Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act”, 40 CFR Parts 1500-1508)

NEPA Process



EPA's Role in NEPA

- Review and comment publicly on EISs produced by other Federal agencies
- Serve as Cooperating Agency
- Prepare its own NEPA documents for compliance
- Filing responsibilities for EISs and publish Notices of Availability in the Federal Register
 - EISs and EPA comment letters can be found here:
<https://cdxnodengn.epa.gov/cdx-enepa-II/public/action/eis/search>

NEPA Limitations

- Applies only to Federal actions
- Imposes procedural, not substantive, requirements
- Offers transparency in decision-making and input from the public, but final decision is by lead agency
- NEPA has no penalty or enforcement provision

Overview of key changes under the 2020 Revised NEPA Regulations

2020
Regulations:
*Accelerate the
NEPA Process*

- **Time limits:**
 - Two years for EISs
 - One year EAs
- **Page limits:**
 - EISs limited to 150 pages, 300 pages for unusually complex EISs
 - EAs limited to 75 pages

2020
Regulations:
*Revised
Definition of
Effects*

- Revises the definition of effects by removing the terms “direct, indirect, and cumulative”
- Environmental effects are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives.
- May include effects that are later in time or farther removed in distance from the proposed action or alternatives.

2020
Regulations:
*Reduced
Criteria of
Significance*

- Revises the definition of intensity/degree (significance) to 4 criteria:
 - Short- and long-term effects
 - Beneficial and adverse effects
 - Effects on public health and safety
 - Effects that would violate Federal, State, Tribal, or local law protecting the environment
- Criteria removed:
 - Unique characteristics
 - Level of controversy
 - Highly uncertain/unique or unknown risks
 - Establishes precedence
 - Cumulatively significant

2020
Regulations:
NEPA
***“Threshold
Analysis”***

- New threshold analysis redefining if NEPA applies:
 - Is it inconsistent with Congressional intent expressed in another statute?
 - Is it a “major Federal action”?
 - Is it in whole, or in part, a non-discretionary action for which the agency lacks authority to consider environmental effects as part of its decision-making process? and
 - Is another statute functionally equivalent?

2020
Regulations:
*Stakeholder
Input and
Modernized
Outreach*

- “Tribes” added as stakeholder throughout regulations
- Require earlier solicitation of input from the public
- Outreach and documentation modernized

Recent NEPA
developments
under the Biden-
Harris
Administration

Recent NEPA developments under the Biden-Harris Administration

- Recent Executive Orders
- Department of the Interior news: Secretary Haaland issues Secretarial Orders 3399 and 3398
 - SO 3399: highlights importance of addressing climate change, environmental justice, and NEPA analyses
 - SO 3398: rescinds various orders issued during the Trump Administration, including DOI streamlining efforts

Recent NEPA developments under the Biden-Harris Administration – What's next?

- CEQ currently reconsidering the 2020 Regulations, which could involve repealing or amending it
 - Brenda Mallory recently confirmed as CEQ Chair
- 2020 Regulations remain in effect and are currently being challenged

Thank you!

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