



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
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COUNCIL ON ENVIRONMENTAL QUALITY PLAN FOR RETROSPECTIVE REVIEW OF
EXISTING REGULATIONS

FROM: Nancy H. Sutley
Chair

A handwritten signature in black ink, appearing to read "Nancy H. Sutley".

The Council on Environmental Quality (CEQ) is pleased to present this Plan for Retrospective Review of Existing Regulations (“Plan”) in accordance with Executive Order 13563.¹ To answer President Obama’s call to improve our regulatory system by protecting public health, welfare, safety, and our environment, and to promote economic growth, innovation, competitiveness, and job creation, CEQ will use the NEPA Pilot Program to review its NEPA Regulations. As described in CEQ’s May 18, 2011, Preliminary Plan, this approach is consistent with the recommendations provided by the Office of Information and Regulatory Affairs for implementing the “look back” requirement of Executive Order 13563.²

CEQ’s mission and the work it does every day reflect the guiding principles of Executive Order 13563. CEQ is an agency within the Executive Office of the President (EOP), established by Congress under the National Environmental Policy Act of 1969 (NEPA) and given additional responsibilities under the Environmental Quality Improvement Act of 1970. As a cornerstone of our Nation’s efforts to protect the environment, NEPA recognizes that many Federal activities affect the environment and mandates that Federal agencies consider the environmental impacts of their proposed actions before acting. Like Executive Order 13563, NEPA emphasizes public involvement in government actions, namely those affecting the environment, by requiring agencies to assess and publicly disclose the environmental impacts associated with proposed actions. Under NEPA, CEQ coordinates Federal environmental efforts and works closely with agencies and other EOP offices to balance environmental, economic, and social objectives in pursuit of NEPA’s goal of “productive harmony” between humans

¹ “Improving Regulation and Regulatory Review,” Exec. Order 13,563, 76 FR 3821 (January 21, 2011), *available at* www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf.

² Memorandum for the Heads of Executive Departments and Agencies, and of Independent Regulatory Agencies, M-11-10, “Executive Order 13563, ‘Improving Regulation and Regulatory Review’” (February 2, 2011).

and the human environment. As a small agency within the EOP, CEQ only has regulations implementing NEPA and the Freedom of Information Act (FOIA).

On August 11, 2010, CEQ updated its regulations implementing FOIA to reflect CEQ's policy and practices of conducting its activities in an open manner and providing the public with accurate and timely information about its activities and to reaffirm CEQ's commitment to providing the fullest possible disclosure of records to the public.³ CEQ's recent revisions to its FOIA Regulations are described in CEQ's May 18, 2011, Preliminary Plan. CEQ did not receive any public comment on the portions of its Preliminary Plan regarding those revisions. This Plan describes CEQ's intended process for reviewing and revising, as necessary, its procedures and regulations for implementing NEPA and summarizes the public comments CEQ received on its Preliminary Plan.

Background on CEQ's Existing NEPA Rules

Under NEPA, each federal agency is responsible for implementing NEPA directly through the application of categorical exclusions and the preparation of environmental assessments and environmental impact statements. CEQ was established under NEPA to, among other things, oversee federal agencies' implementation of the NEPA environmental review process, and to ensure that federal agencies' environmental review procedures achieve NEPA's policy objectives. CEQ promulgated Regulations for Implementing the Procedural Provisions of the NEPA ("NEPA Regulations") in 1979.⁴ The CEQ NEPA Regulations establish guidelines Federal agencies must follow to ensure that their NEPA implementing procedures are consistent with NEPA's policy objectives and procedural requirements. CEQ routinely consults with agencies as they review and update their NEPA implementing procedures. This process of routine review and revision advances the purpose of Executive Order 13563. CEQ also regularly issues guidance to federal departments and agencies to assist them in applying the CEQ NEPA Regulations to new circumstances and issues as they arise. These guidance documents help Federal agencies meet the goals of NEPA, by enhancing the quality of governmental decisions affecting the environment, increasing transparency and public involvement in those decisions, and, in some circumstances, easing implementation of agency regulations.⁵

Since February 2010, CEQ has engaged in a broad effort to modernize and reinvigorate Federal agency implementation of NEPA through innovation, public engagement, and transparency, thereby working to keep agency regulations and associated CEQ guidance up-to-date. CEQ has issued two guidance documents and proposed a third to help Federal agencies ensure the integrity of their

³ 40 CFR part 1515, 75 FR 48585 (August 11, 2010).

⁴ Regulations for Implementing the Procedural Requirements of the National Environmental Policy Act (CEQ NEPA Regulations), 40 CFR parts 1500-1508 *available at* ceq.hss.doe.gov/ceq_regulations/regulations.html.

⁵ *See* the guidance documents *available at* ceq.hss.doe.gov/ceq_regulations/guidance.html.

environmental reviews and promote sound governmental decision-making.⁶ One guidance document calls upon agencies to periodically conduct reviews of their categorical exclusions and to enhance public involvement in the promulgation and use of categorical exclusions. Another clarifies the appropriate use of Findings of No Significant Impact in the context of Environmental Assessments. The guidance encourages agencies to develop internal processes for post-decision monitoring to ensure the implementation and effectiveness of mitigation measures. It also states that agencies may use adaptive management as part of an agency's action. Adaptive management, when included in a NEPA analysis, allows for an agency to take alternate mitigation actions if the mitigation commitments originally made in its decision documents fail to achieve projected environmental outcomes. The approaches described in CEQ's guidance documents mirror the principles of innovation, flexibility, and retrospective review embodied in Executive Order 13563.

CEQ's Plan for Retrospective Review NEPA Regulations

As described in CEQ's Preliminary Plan, CEQ issued a solicitation to members of the public and Federal agencies on March 17, 2011, inviting them to nominate pilot projects that demonstrate a more efficient approach to NEPA implementation and accomplish the goals of improved transparency and informed decision making.⁷ CEQ is using this process to meet its obligations under section 6 of Executive Order 13563 to facilitate a review of provisions of CEQ's NEPA Regulations that may be outmoded, ineffective, insufficient, or excessively burdensome. The NEPA Pilot Program will allow CEQ to identify innovative approaches that reduce the time and costs required for effective NEPA implementation. CEQ will work to promote retrospective analysis of its NEPA Regulations as appropriate to incorporate efficient practices into agencies' implementation of NEPA. CEQ has chosen to use this process rather than using a generalized approach for review and revision, because the NEPA Pilot Program provides a focused context for regulatory review that allows CEQ and the agencies to engage in a more informed consideration of any regulatory provisions that would benefit from change. CEQ's goal is to improve effectiveness and efficiency of the NEPA process by identifying and selecting

⁶ The two final guidance documents issued as part of the modernization effort are the Memorandum for Heads of Federal Departments and Agencies, "Establishing, Applying and Revising Categorical Exclusions under the National Environmental Policy Act" (November 23, 2010) *available at* ceq.hss.doe.gov/ceq_regulations/NEPA_CE_Guidance_Nov232010.pdf, and the Memorandum for Heads of Federal Departments and Agencies, "Appropriate Use of Mitigation and Monitoring and Appropriate Use of Mitigated Findings of No Significant Impact" (January 14, 2011) *available at* ceq.hss.doe.gov/current_developments/docs/Mitigation_and_Monitoring_Guidance_14Jan2011.pdf. A draft of the guidance document that is being finalized, "Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions" (February 18, 2010) is available at ceq.hss.doe.gov/nepa/regs/Consideration_of_Effects_of_GHG_Draft_NEPA_Guidance_FINAL_02182010.pdf.

⁷ Memorandum to Interested Parties and Heads of Federal Departments and Agencies, "Call for Innovative National Environmental Policy Act (NEPA) Pilot Project Proposals" (March 17, 2011) *available at* www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/nepa-pilot-project.

projects that underscore the President's goals for improved public participation, greater integration and innovation, flexible approaches and sound science in our regulations. Eventually, successful pilots could lead to the adoption of new or revised NEPA procedures and could identify which of CEQ's NEPA Regulations would benefit from revision.

Since the time CEQ's Preliminary Plan was released, CEQ has received 37 nominations for pilot projects, all of which have been posted online. The nominations were received via the CEQ website during a 90-day solicitation period, from March 17 to June 15, 2011.⁸ Nineteen nominations came from the public. The rest were submitted on behalf of agencies. Twenty-six nominations were for innovative approaches that have been or are being implemented; the remainder proposed ideas that have not been previously implemented. CEQ convened a panel of more than a dozen NEPA practitioners from different federal agencies to review the nominations to identify those with the greatest potential to (1) reduce the cost or time needed to complete the NEPA process; (2) ensure environmental protection; (3) improve the quality and transparency of federal agency decisionmaking; and (4) yield best practices or procedural innovations that can be replicated by other agencies or applied more broadly so as to improve federal agencies' NEPA implementation. A small group of NEPA experts from EPA, DOJ, and CEQ is now reviewing the recommendations from the screening panel and will then forward recommendations to the CEQ Chair who will select up to five top pilot projects for implementation. Selected nominations will be announced soon.

The pilot project nominations included ideas for: digitizing and developing environmental information to facilitate federal decisions under NEPA and other environmental laws; using electronic tools to improve agency's efficiency in developing and managing their NEPA reviews; using electronic tools to help applicants and grantees identify and submit information needed for NEPA implementation or compliance with federal environmental regulations; improving the scale and scope of NEPA implementation; increasing the efficiency of the NEPA process by using a variety of best practices; improving NEPA document drafting, such as by using standardized protocols or templates for analyzing particular issues; and analyzing alternatives iteratively to eliminate the need for costly supplementation.

In addition to the insights and public input that CEQ received as part of the Pilot Project nomination process, CEQ received public comments on its Preliminary Plan from the American Association of State Highway and Transportation Officials (AASHTO) and from the National League of Cities (NLC). Both organizations recommended that CEQ look for ways to shorten the time it takes to complete environmental reviews and provided suggestions for eliminating duplicative reviews by combining federal and state environmental reviews to meet the requirements of NEPA. CEQ appreciates the comments submitted by these organizations and will consider these comments in selecting its final pilot projects. Additionally, these comments will help inform CEQ's efforts to reinvigorate the NEPA process.

⁸ CEQ received 38 nominations in total, but one was withdrawn by the submitter prior to June 15. See the nominations at www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/nepa-pilot-project-nominations.

It is premature to attempt to quantify any potential cost savings or benefits from CEQ's plan for a retrospective review of its regulations, because the results of any such analysis will depend on the pilot projects that are selected for implementation. Because CEQ's NEPA Regulations establish a framework that provides guidelines for Federal agencies in adopting their own NEPA implementing procedures in consultation with CEQ and because the agencies themselves are responsible for implementing NEPA, CEQ's regulations do not impose direct costs on the public. Similarly, the timing of any regulatory revisions CEQ may undertake will be dependent on the completion of pilot projects that are selected. CEQ will continue to consider how regulations might be designed and written in ways that facilitate evaluation of their consequences and thus promote retrospective analyses and encourage the retrospective review of agency NEPA implementing procedures and regulations.⁹ As part of the implementation of the selected pilot projects, CEQ and participating agencies will use quantitative and qualitative metrics to analyze the efficiency and effectiveness of the approaches used in each pilot. This analysis will in turn enable CEQ, and other federal agencies, to identify any regulatory revisions necessary to implement successful approaches more broadly.

CEQ fully supports the principles and directives of Executive Order 13563 and eagerly anticipates the outcome of the NEPA Pilot Program to support CEQ's retrospective analysis of its regulations. Executive Order 13563 calls for periodic review of existing significant regulations. Consistent with the commitment to periodic review and to public participation, CEQ will continue to assess its existing significant regulations in accordance with the requirements of Executive Order 13563. CEQ welcomes public suggestions about appropriate reforms. If members of the public identify possible reforms to improve efficient implementation and to prevent unnecessary burdens, CEQ will give those suggestions careful consideration.

⁹ CEQ guidance on establishing and revising Categorical Exclusion provisions in agency NEPA implementing procedures calls for agencies to periodically review such provisions. See "Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act" available at http://ceq.hss.doe.gov/ceq_regulations/NEPA_CE_Guidance_Nov232010.pdf. This comports with the CEQ Regulations Implementing the Procedural Provisions of the National Environmental Policy Act which state that "Agencies shall continue to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of the Act" at 40 CFR 1507.3 available at <http://ceq.hss.doe.gov/nepa/regs/ceq/1507.htm#1507.3>.