



EXECUTIVE OFFICE OF THE PRESIDENT  
COUNCIL ON ENVIRONMENTAL QUALITY  
WASHINGTON, D.C. 20503

May 18, 2011

COUNCIL ON ENVIRONMENTAL QUALITY PRELIMINARY 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 submit this preliminary plan for a retrospective review of its regulations in response to Executive Order 13563.<sup>1</sup> President Obama has called on each federal agency to improve our regulatory system by protecting public health, welfare, safety, and our environment, while promoting economic growth, innovation, competitiveness, and job creation. The Executive Order establishes principles and requirements designed to promote public participation, improve integration and innovation, increase flexibility, ensure scientific integrity, and increase retrospective analysis of existing rules.

These guiding principles are reflected in CEQ's mission and the work it does every day. CEQ was established within the Executive Office of the President (EOP) by Congress as part of the National Environmental Policy Act of 1969 (NEPA) and additional responsibilities were provided by 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 affecting the environment by requiring that the environmental impacts associated with proposed actions be assessed and publicly disclosed. Under NEPA, CEQ coordinates Federal environmental efforts and works closely with agencies and other White House offices to balance environmental, economic, and social objectives in pursuit of NEPA's goal of "productive harmony" between humans and the human environment. As a small EOP agency, CEQ only has regulations implementing NEPA and the Freedom

---

<sup>1</sup> "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](http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf).

of Information Act (FOIA). This document describes recent revisions to CEQ's FOIA regulations and CEQ's preliminary plan for reviewing its existing NEPA Regulations.

### CEQ's Recent Retrospective Review of its FOIA Regulations

Even before the issuance of Executive Order 13563, CEQ engaged in efforts to modernize its regulations addressing transparency and public disclosure. Specifically, 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.<sup>2</sup> This was the first time that these regulations had been revised since they were promulgated in 1977.

Consistent with Executive Order 13563's emphasis on public participation, the updated regulations reflect the principles established by President Obama's Presidential Memoranda on "Transparency and Open Government" and "Freedom of Information Act" issued on January 21, 2009, and Attorney General Holder's "Memorandum on The Freedom of Information Act (FOIA)" issued on March 19, 2009. The regulations provide for, among other things: an online FOIA Requester Service Center and Reading Room; electronic FOIA requests; access to records published or released under FOIA in electronic format, provided the record is readily reproducible in that form or format; and designation of a Chief FOIA Officer and FOIA Public Liaison. As a result of these changes, CEQ regards its FOIA regulations as fully up-to-date and without need of further review at this time.

### CEQ's Preliminary Plan for Retrospective Analysis of Existing NEPA Rules

CEQ promulgated the CEQ NEPA Regulations in 1979.<sup>3</sup> The CEQ NEPA Regulations establish a framework that provides guidelines for Federal agencies in adopting their own NEPA implementing procedures in consultation with CEQ. However, the agencies themselves are responsible for implementing NEPA directly through the application of categorical exclusions and the preparation of environmental assessments

---

<sup>2</sup> 40 CFR part 1515, 75 FR 48585 (August 11, 2010).

<sup>3</sup> 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](http://ceq.hss.doe.gov/ceq_regulations/regulations.html).

and environmental impact statements. 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. Finally, CEQ regularly issues guidance to assist federal agencies in applying its regulations to new circumstances and issues as they arise. These guidance documents help Federal agencies meet the goals of NEPA, enhance the quality of public involvement in governmental decisions relating to the environment, increase transparency, and, in some circumstances, ease implementation of agency regulations.<sup>4</sup> For example, last year, CEQ provided agencies with a step-by-step process for determining the appropriate path forward for the NEPA environmental review of all actions proposed in response to an emergency situation, such as the Federal response to the oil spill in the Gulf of Mexico.<sup>5</sup>

More recently, 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 these regulations and associated guidance up-to-date. CEQ has issued two guidance documents and is finalizing a third to help Federal agencies ensure the integrity of their environmental reviews and promote sound governmental decision-making.<sup>6</sup> One guidance document calls upon agencies to periodically conduct reviews of their categorical exclusions and to enhance public involvement and increase the transparency of the agencies promulgation and use of categorical exclusions. Another clarifies the appropriate use of Findings of No Significant Impact in the context of Environmental Assessments.

---

<sup>4</sup> See the guidance documents available at [ceq.hss.doe.gov/ceq\\_regulations/guidance.html](http://ceq.hss.doe.gov/ceq_regulations/guidance.html).

<sup>5</sup> Memorandum for Heads of Federal Departments and Agencies, “Emergencies and the National Environmental Policy Act” (May 12, 2011) *available at* [ceq.hss.doe.gov/ceq\\_regulations/Emergencies\\_and\\_NEPA\\_Memorandum\\_12May2010.pdf](http://ceq.hss.doe.gov/ceq_regulations/Emergencies_and_NEPA_Memorandum_12May2010.pdf)

<sup>6</sup> 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](http://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](http://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](http://ceq.hss.doe.gov/nepa/regs/Consideration_of_Effects_of_GHG_Draft_NEPA_Guidance_FINAL_02182010.pdf).

As a part of this broader effort, 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.<sup>7</sup> Pilot project nominations are due by June 15, 2011, and will be considered for selection on a rolling basis. 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. CEQ believes that a more informed consideration of any regulatory provisions that would benefit from change will occur in the context of particular efforts at improvement, created through its Pilot Program, than through a generalized discussion.

CEQ's preliminary plan to use the NEPA Pilot Program to conduct a retrospective review of the CEQ NEPA Regulations is consistent with the approach recommended by the Office of Information and Regulatory Affairs for implementing the "look back" requirement of Executive Order 13563.<sup>8</sup> First, CEQ's approach relies on public participation in identification of nominations of pilot projects that propose improvements to any aspect of the NEPA process. Rooted in the spirit of open government, CEQ's NEPA pilot program engages the public to help make government more efficient and accountable. Second, in selecting pilot projects, CEQ will consider Administration priorities and strive for a diverse set of projects in terms of geography, agency participation, and natural resource management issues. Third, CEQ will be evaluating the pilot projects to identify projects that can be replicated to increase efficiency of the NEPA process across government. In collaboration with the relevant agencies, CEQ will track the implementation of up to five selected pilot projects, evaluate their outcomes, and highlight and promote lessons learned. Fourth, responsibility for the retrospective review will be vested in CEQ's Deputy Director. Finally, the NEPA Pilot Program is an integral part of CEQ's efforts to modernize and reinvigorate NEPA.

---

<sup>7</sup> 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](http://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/nepa-pilot-project).

<sup>8</sup> 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).

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.