



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

March 6, 2012

MEMORANDUM FOR HEADS OF FEDERAL DEPARTMENTS AND AGENCIES

FROM: NANCY H SUTLEY
Chair
Council on Environmental Quality

SUBJECT: Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act

A wide array of tools is available to meet the goal of high quality, efficient, and timely environmental reviews under the National Environmental Policy Act (NEPA). The Council on Environmental Quality (CEQ) Regulations implementing NEPA contain a number of opportunities for achieving this goal. CEQ is issuing this guidance for Federal departments and agencies to emphasize and clarify those opportunities, fully consistent with a thorough and meaningful environmental review. The guidance also makes it clear that many of the provisions of the CEQ Regulations which specifically refer to an Environmental Impact Statement (EIS) provide efficiencies that can also be used to prepare an Environmental Assessment (EA). This guidance applies equally to the preparation of an EA or an EIS consistent with legal precedent and agency NEPA experience and practice.

In conducting all environmental reviews pursuant to NEPA, agencies should use the methods set out in the CEQ Regulations and in their own agency NEPA implementing procedures in a way that is mindful of the following basic principles:

- NEPA encourages straightforward and concise reviews and documentation that are proportionate to potential impacts and effectively convey the relevant considerations to the public and decisionmakers in a timely manner while rigorously addressing the issues presented;
- NEPA shall be integrated into project planning to ensure planning and decisions reflect environmental considerations, avoid delays later in the process, and anticipate and attempt to resolve potential issues rather than be an after-the-fact process that justifies a decision already made;
- NEPA reviews should coordinate and take appropriate advantage of existing documents and studies, including through adoption and incorporation by reference;

- Early and well-defined scoping can assist in focusing environmental reviews on appropriate issues that would be meaningful to a decision;
- Agencies are encouraged to develop meaningful and expeditious timelines for environmental reviews; and
- Agencies should respond to comments in proportion to the scope and scale of the environmental issues raised.

This guidance also reflects CEQ's continuing commitment to implement its Plan for Retrospective Review of Existing Regulations ("Plan") in accordance with Executive Order 13563.¹ Our ongoing review of the CEQ Regulations confirms the benefits of integrating environmental reviews into the decisionmaking process, coordinating multi-agency or multi-governmental reviews and approvals, and setting clear schedules for preparing EAs and EISs. This guidance promotes a sufficient and effective process that is tailored to avoid excessive burden. This guidance provides CEQ's interpretation of existing regulations promulgated under NEPA, and does not change agencies' obligations with regard to NEPA and the CEQ Regulations.²

Introduction and Steps to Date

CEQ was created by NEPA in 1970 and is charged with overseeing NEPA implementation by Federal agencies. In 1978, CEQ issued the CEQ Regulations implementing NEPA.³ From time to time, CEQ issues guidance for the Federal agencies, to clarify the requirements and applicability of various provisions of NEPA and the CEQ Regulations, and to ensure that those requirements can be met in a timely and effective fashion.⁴ These guidance

¹ Improving Regulation and Regulatory Review, Exec. Order No. 13,563, 76 Fed. Reg. 3,821 (Jan. 21, 2011), *available at* www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf.

² This guidance is not a rule or regulation, and the recommendations it contains may not apply to a particular situation based upon the individual facts and circumstances. This guidance does not change or substitute for any law, regulations, or any other legally binding requirement and is not legally enforceable. The use of non-mandatory terminology such as "guidance," "recommend," "may," "should," and "can," is intended to describe CEQ policies and recommendations. The use of mandatory terminology such as "shall," "must," and "required" is intended to describe controlling requirements under NEPA and the CEQ Regulations, but this document does not establish legally binding requirements in and of itself.

³ The Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 C.F.R. pts. 1500-1508 (2011) [hereinafter CEQ Regulations], *available on* www.nepa.gov/ceq_hss.doe.gov/ceq_regulations/regulations.html.

⁴ These guidance documents are available online at ceq.hss.doe.gov/ceq_regulations/guidance.

documents represent CEQ's interpretation of NEPA, which the U.S. Supreme Court has said is "entitled to substantial deference."⁵

NEPA requires Federal agencies to consider the potential environmental consequences of their proposed action, and any reasonable alternatives, before deciding whether and in what form to take an action. Environmental reviews prepared under NEPA should provide a decisionmaker and the public with relevant and timely information, and the CEQ Regulations make it clear that "NEPA's purpose is not to generate paperwork--even excellent paperwork--but to foster excellent action."⁶

NEPA compliance can take three forms, a Categorical Exclusion, an EA, or an EIS:

- **Categorical Exclusion (CE):** A CE describes a category of actions that are expected not to have individually or cumulatively significant environmental impacts.⁷ Each agency's procedures for implementing NEPA sets out that agency's CEs, which are established after CEQ and public review. A proposed action within such a category does not require further analysis and documentation in an EA or an EIS.⁸ A CE can be used after determining that a proposed action falls within the categories of actions described in the CE and that there are no extraordinary circumstances indicating further environmental review is warranted.
- **Environmental Assessment (EA):** When a CE is not appropriate and the agency has not determined whether the proposed action will cause significant environmental effects, then an EA is prepared. If, as a result of the EA, a Finding of No Significant Impact (FONSI) is made, then the NEPA review process is completed with the FONSI, including documentation of its basis in the EA; otherwise an EIS is prepared.⁹
- **Environmental Impact Statement (EIS):** The most intensive level of analysis is the EIS, which is typically reserved for the analysis of proposed actions that are expected to result in significant environmental impacts. When an EIS is prepared, the NEPA review process is concluded when a record of decision (ROD) is issued.¹⁰

⁵ *Andrus v. Sierra Club*, 442 U.S. 347, 358 (1979).

⁶ 40 C.F.R. § 1500.1(c).

⁷ Categorical exclusions can also be created legislatively.

⁸ 40 C.F.R. §§ 1508.4, 1500.5(k).

⁹ 40 C.F.R. § 1508.9.

¹⁰ 40 C.F.R. § 1505.2.

CEQ has been working with agencies to modernize and reinvigorate NEPA implementation in several ways. CEQ issued guidance on the development and use of Categorical Exclusions in November 2010.¹¹ Properly developed and applied, CEs provide an efficient tool to complete the NEPA environmental review process for proposals that normally do not require more resource-intensive EAs or EISs. The use of CEs can reduce paperwork and delay for proposed actions that do not raise the potential for significant environmental effects.¹² In January 2011, CEQ provided guidance that specifically addressed the appropriate use of a FONSI or mitigated FONSI to conclude a NEPA review process relying on an EA. A mitigated FONSI is appropriate when mitigation is used to avoid or lessen potentially significant environmental effects of proposed actions that would otherwise need to be analyzed in an EIS.¹³ In addition, in May 2010, CEQ issued guidance on ensuring efficient and expeditious compliance with NEPA when agencies must take exigent action to protect human health or safety and valued resources in a timeframe that does not allow sufficient time for the normal NEPA process.¹⁴

In August 2011 the President called for further steps to enhance the efficient and effective permitting and environmental review of infrastructure development “through such strategies as integrating planning and environmental reviews; coordinating multi-agency or multi-governmental reviews and approvals to run concurrently; setting clear schedules for completing steps in the environmental review and permitting process; and utilizing information technologies to inform the public about the progress of environmental reviews as well as the progress of Federal permitting and review processes.”¹⁵ This guidance sets forth straightforward means by which the CEQ Regulations support these strategies.

1. Concise NEPA Documents

¹¹ CEQ, “Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act” (Nov. 23, 2010), *available at* ceq.hss.doe.gov/ceq_regulations/NEPA_CE_Guidance_Nov232010.pdf.

¹² See 40 C.F.R. § 1500.4(p) (recommending categorical exclusions as a tool to reduce paperwork) and § 1500.5(k) (recommending categorical exclusions as a tool to reduce delay).

¹³ CEQ, “Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact” (Jan. 14, 2011), *available at* ceq.hss.doe.gov/current_developments/docs/Mitigation_and_Monitoring_Guidance_14Jan2011.pdf.

¹⁴ CEQ, “Emergencies and the National Environmental Policy Act,” (May 12, 2010), *available at* ceq.hss.doe.gov/ceq_regulations/Emergencies_and_NEPA_Memorandum_12May2010.pdf.

¹⁵ Presidential Memorandum, “Speeding Infrastructure Development through More Efficient and Effective Permitting and Environmental Review” (Aug. 31, 2011), *available at* www.whitehouse.gov/the-press-office/2011/08/31/presidential-memorandum-speeding-infrastructure-development-through-more.

Agencies are encouraged to concentrate on relevant environmental analysis in their EAs and EISs, not to produce an encyclopedia of all applicable information.¹⁶ Environmental analysis should focus on significant issues, discussing insignificant issues only briefly.¹⁷ Impacts should be discussed in proportion to their significance, and if the impacts are not deemed significant there should be only enough discussion to show why more study is not warranted.¹⁸ Scoping,¹⁹ incorporation by reference,²⁰ and integration of other environmental analyses²¹ are additional methods that may be used to avoid redundant or repetitive discussion of issues.²²

All NEPA environmental documents, not just EISs, shall be written in plain language,²³ follow a clear format, and emphasize important impact analyses and relevant information necessary for those analyses, rather than providing extensive background material. Clarity and consistency ensure that the substance of the agency's analysis is understood, avoiding unnecessary confusion or risk of litigation that could result from an ambiguous or opaque analysis. The CEQ Regulations indicate that the text of a final EIS that addresses the purpose and need, alternatives, affected environment, and environmental consequences should normally be less than 150 pages and a final EIS for proposals of unusual scope or complexity should normally be less than 300 pages.²⁴

In light of the growth of environmental requirements since the publication of the CEQ Regulations, and the desire to use the EIS to address, via integration, those requirements, it is recognized that there will be a range of appropriate lengths of EISs. Nevertheless, agencies should keep EISs as concise as possible (continuing to relegate to appendices the relevant studies and technical analyses used to support the determinations and conclusions reached in the EIS) and no longer than necessary to comply with NEPA and the other legal and regulatory requirements being addressed in the EIS, and to provide decision makers and the public with the information they need to assess the significant environmental effects of the action under review. Length should vary with the number, complexity and significance of potential environmental problems.²⁵

¹⁶ 40 C.F.R. §§ 1500.4(b), 1502.2(b).

¹⁷ 40 C.F.R. § 1502.2(c); *see also* 40 C.F.R. § 1502.2(a) (“Environmental impact statements shall be analytic rather than encyclopedic.”).

¹⁸ 40 C.F.R. § 1502.2(b).

¹⁹ 40 C.F.R. § 1500.4(g).

²⁰ 40 C.F.R. § 1500.4(j).

²¹ 40 C.F.R. § 1500.4(k).

²² *See generally* 40 C.F.R. § 1502.1 (EISs should be written in plain language so that decisionmakers and the public can understand them).

²³ 40 C.F.R. § 1502.8; *see also* www.plainlanguage.gov.

²⁴ 40 C.F.R. § 1502.7.

²⁵ 40 C.F.R. § 1502.2(c) (EISs “shall be kept concise and . . . [I]ength should vary first with potential environmental problems and then with project size”).

Similarly, the CEQ guidance issued in 1981 indicated that 10-15 pages is generally appropriate for EAs.²⁶ This guidance must be balanced with the requirement to take a hard look at the impacts of the proposed action. As with EISs, an EA's length should vary with the scope and scale of potential environmental problems as well as the extent to which the determination of no significant impact relies on mitigation, rather than just with the scope and scale of the proposed action.²⁷ The EA should be no more detailed than necessary to fulfill the functions and goals set out in the CEQ Regulations: (1) briefly provide sufficient evidence and analysis for determining whether to prepare an EIS; (2) aid an agency's compliance with NEPA when no EIS is necessary, i.e., the EA helps to identify and analyze better alternatives and mitigation measures; and (3) facilitate preparation of an EIS when one is necessary.²⁸

2. Early NEPA Integration in Planning

An agency should first consider integrating the NEPA process into planning when it structures its internal process for developing a proposed policy, program, management plan, or project. Agencies must integrate the NEPA process into their planning at the earliest possible time to ensure that planning and decisions reflect environmental values, avoid delays later in the process, and anticipate and attempt to resolve potential issues.²⁹ NEPA should not become an after-the-fact process that justifies decisions that have already been made.³⁰

The CEQ Regulations emphasize early NEPA planning in the context of an EIS. The scoping process can be used before an agency issues a notice of intent to seek useful information

²⁶ See CEQ, "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations" (Mar. 16, 1981), *available at* ceq.hss.doe.gov/nepa/regs/40/30-40.HTM#36 (Question 36a and Answer). Note that at the time of Forty-Questions memorandum CEQ was of the opinion that mitigated Findings of No Significant Impact were only appropriate if the mitigation measures were imposed by statute or regulation, or submitted by an applicant or agency as part of the original proposal. *See Id.* (Question 40 and Answer). CEQ has since published guidance accepting mitigated FONSI as another means of efficiently concluding the NEPA process without producing an EIS. CEQ, "Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact" (Jan. 14, 2011), *available at* ceq.hss.doe.gov/current_developments/docs/Mitigation_and_Monitoring_Guidance_14Jan2011.pdf.

²⁷ See 40 C.F.R. § 1508.9 (stating the EA is "a concise public document") and 40 C.F.R. § 1502.2(c) (interpreting the conciseness requirement for an EIS to mean that "length should vary first with potential environmental problems and then with project size").

²⁸ 40 C.F.R. § 1508.9(a).

²⁹ 40 C.F.R. § 1501.2.

³⁰ 40 C.F.R. § 1502.2(g).

on a proposal from agencies and the public.³¹ For example, agencies can commence the process to prepare an EIS during the early stages of development of a proposal, to ensure that the environmental analysis can be completed in time for the agency to consider the final EIS before making a decision on the proposal.³² Further, an agency shall prepare an EIS so that it can inform the decisionmaking process in a timely manner “and will not be used to rationalize or justify decisions already made.”³³

To prepare efficient EAs, agencies should adhere to these same principles and ensure that the EA is prepared in conjunction with the development of the proposed action in time to inform the public and the decisionmaker. Agencies should review their NEPA implementing procedures as well as their NEPA practices to ensure that NEPA is integrated into overall project planning and management to the fullest extent possible.

The CEQ Regulations call upon agencies to provide for situations where the initial planning process is in the hands of an applicant or other non-Federal entity.³⁴ The Regulations require Federal agencies to address these situations in their NEPA implementing procedures.³⁵

³¹ See CEQ Memorandum to Agencies, “Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations” (Mar. 16, 1981), *available at* ceq.hss.doe.gov/nepa/regs/40/11-19.HTM#13 (Question 13 and Answer).

³² See 40 C.F.R. § 1508.23 (explaining that a proposal exists as soon as an agency “has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated”).

³³ 40 C.F.R. § 1502.5. For guidelines specific to different agency activities, see 40 C.F.R. § 1502.5(a)-(d). Misuse of the NEPA process to justify decisions already made is counterproductive and can result in litigation that could delay and ultimately prevent a proposed action from proceeding.

³⁴ See 40 C.F.R. § 1501.2(d) (non-Federal entities plan activities prior to Federal involvement that trigger NEPA requirements).

³⁵ 40 C.F.R. § 1507.3(b)(1). All agencies are required to adopt procedures that supplement the CEQ Regulations and provide NEPA implementing guidance that both provides agency personnel with additional, more specific direction for implementing the procedural provisions of NEPA and informs the public and State and local officials of how the CEQ Regulations will be implemented in agency decisionmaking. Agency procedures should therefore provide Federal personnel with the direction they need to implement NEPA on a day-to-day basis. The procedures must also provide a clear and uncomplicated picture of what those outside the Federal government may do to become involved in the environmental review process under NEPA. See CEQ, “Agency Implementing Procedures Under CEQ’s NEPA Regulations” (Jan. 19, 1979), *available at* ceq.hss.doe.gov/nepa/regs/exec11979.html. Some examples of agency NEPA implementing procedures are the Department of the Interior, “Department Manual: Managing the