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

April 3, 2009

MEMORANDUM FOR HEADS OF DEPARTMENTS AND FEDERAL AGENCIES

FROM: Nancy Sutley
Chair

SUBJECT: ENVIRONMENTAL COMPLIANCE AND GUIDANCE FOR REPORTING NEPA STATUS AND PROGRESS FOR RECOVERY ACT ACTIVITIES AND PROJECTS

The President has made clear that every taxpayer dollar spent on our economic recovery must be subject to unprecedented levels of transparency and accountability. In Section 1609 of the "American Recovery and Reinvestment Act of 2009" (Recovery Act) Congress found that the National Environmental Policy Act (NEPA) process protects public health, safety and environmental quality by ensuring transparency, accountability and public involvement in federal actions and in the use of public funds. Congress directed that adequate resources under the Recovery Act "must be devoted to ensuring that applicable environmental reviews under [NEPA] are completed on an expeditious basis and that the shortest existing applicable process under [NEPA] shall be utilized." Recovery Act Section 1609(b). To ensure transparency and accountability in the implementation of the Recovery Act, Section 1609 further provides:

> (c) The President shall report to the Senate Environment and Public Works Committee and the House Natural Resources Committee every 90 days following the date of enactment until September 30, 2011 on the status and progress of projects and activities funded by this Act with respect to compliance with National Environmental Policy Act requirements and documentation.

To satisfy Section 1609(c) reporting requirements, Executive Branch departments and agencies must report to CEQ, the status and progress of NEPA compliance on all Recovery Act funded projects and activities that are reported to OMB pursuant to OMB implementing guidance for the Recovery Act. CEQ is working with OMB to incorporate the Section 1609(c) reporting requirements into upcoming OMB guidance so that agencies have a one-stop resource for implementing all reporting requirements.

This memorandum sets forth the reporting requirements with which Executive Branch departments and agencies must comply in order to satisfy Section 1609(c) of the Recovery Act. Specifically, the federal agency funding the project or activity under the Recovery Act will be responsible for reporting the status of all NEPA compliance associated with the project or activity – including any environmental review and documentation prepared by an approving or permitting agency, a grantee or a contractor. Attached is a reporting template and explanatory guidance for Section 1609 reporting.

CEQ encourages all departments and agencies to demonstrate environmental stewardship and their commitment to the sustainability goals of Recovery Act provisions by ensuring that environmental reviews and informed decisionmaking guide the implementation of Recovery Act activities and projects. Many agencies have a backlog of "shovel ready" projects, which have completed environmental analyses and are fully permitted, approved, and ready for implementation. For any projects and activities for which necessary environmental activities and permits have not been completed, agencies should ensure that they address these outstanding compliance issues as quickly as possible.

Recovery Act implementation should proceed expeditiously and in compliance with all environmental, health and safety requirements. In order to comply with NEPA, departments and agencies can: (a) ensure proposals that can potentially be categorically excluded have been or are being reviewed for extraordinary circumstances (40 C.F.R. 1508.4); (b) use concise and focused environmental assessments (40 C.F.R. 1508.9(b)); (c) prepare programmatic analyses in cases where consolidated analysis of similar, connected, or cumulative proposals will facilitate efficient compliance with NEPA (40 C.F.R. 1502.4(c), 1502.20, and 1508.28); (d) review other federal agencies' NEPA analyses and documentation for the project or activity for potential adoption (40 C.F.R. 1506.3) or incorporation by reference (40 C.F.R. 1502.21); and (e) engage CEQ to address any specific NEPA compliance concerns and issues.

In addition, departments and agencies should proactively comply with all applicable environmental statutes – such as the National Historic Preservation Act, Endangered Species Act, Clean Water Act – and environmental requirements – such as the energy and water efficiency, renewable energy, and sustainable buildings requirements of Executive Order 13423 (Strengthening Federal Environmental, Energy, and Transportation Management) – to ensure efficient development of Recovery Act projects and activities.

All departments and agencies provided Recovery Act funding should assess the need for permits and approvals, and effectively and promptly coordinate with the permitting and approval agencies to allow them to plan how to best assist in implementing Recovery Act projects and activities.

Finally, any department or agency that identifies a project or activity experiencing substantial delays in completing NEPA reviews and documentation should immediately notify CEQ by sending a message to recovery@ceq.eop.gov, which identifies the project, its current status, all known reasons for the delay, and a point of contact (name, title, organization, phone, cell phone and e-mail).

This memorandum and the attachments replace the memorandum dated March 11, 2009.

Attachments: Recovery Act Section 1609(c) Reporting Guidance
NEPA Section 1609 Updated Report Template (2 Pages)

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AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)
SECTION 1609(c) REPORTING GUIDANCE

Using the attached spreadsheet, agencies must provide their first Section 1609(c) report to CEQ on the status of NEPA compliance for ARRA projects and activities no later than April 9, 2009. That report will include all ARRA funded projects and activities through April 3, 2009. April 3, 2009, is the "End date for this Report".

Executive Branch departments and agencies must provide their second Section 1609(c) report to CEQ on April 30, 2009, for all activities and projects funded through April 24, 2009. That ARRA Section 1609(c) report will report on the NEPA status and progress of all ARRA funded projects and activities through April 24, 2009. April 24, 2009, is the "End Date for this Report."

Based on those two reports, CEQ will prepare the Section 1609(c) report due to Congress no later than May 18, 2009.

Subsequent department and agency Section 1609(c) reports must be submitted to CEQ on or before July 15, 2009, and every 90 days thereafter through October 15, 2011. These quarterly reports will include the NEPA status and progress on all Recovery Act projects and activities through the last day of the previous month (the "End Date for this Report"). The reports are cumulative and must contain information previously reported with relevant updates and additions.

The Section 1609 reports must be submitted to CEQ at recovery@ceq.eop.gov. The submission must include the completed spreadsheets and a brief cover memo identifying the point(s) of contact for further information as well as explanation(s) of how the spreadsheets were completed (see instructions below).

To ensure the information quality of Section 1609(c) reports, the department or agency funding the project or activity under the ARRA will be responsible for reporting the status of all NEPA compliance associated with the project or activity – including any environmental review and documentation prepared by or for an approving or permitting agency, a grantee or a contractor. In those cases where more than one NEPA review is prepared, the status of the "NEPA action" and "Date NEPA is Done" columns on page 2 of the attached spreadsheet would reflect the latest NEPA action taken. In cases involving NEPA work performed by contractors, the department or agency funding the project or activity under the ARRA should work with the contracting officer to develop any necessary special contract provisions, if the contractor should provide the agency with information necessary for Section 1609 reporting.

Use the following instructions to complete page 1 of the attached spreadsheet:

- The department or agency name, end date of the report, submitter, and contact information for the submitter are entered at the top of page 1.

- The information in columns B (Treasury Appropriations Fund Symbol); D (Total ARRA Appropriations – for the Title/Program reported on that line) and L (Total Obligations – for the ARRA Funded Projects and Activities reported on that line) is available from the department or agency financial officers responsible for ARRA funding.

- The information in column C (Title/Program) must be entered **after** the entries are made on page 2. The Title/Program entry must be identical on both pages for the spreadsheet to function properly.

- The number of ARRA funded projects and activities are entered in column E. When the department or agency is using estimates or is aggregating projects or activities, the cover memo must explain the method for determining the estimate or aggregate.

- The determination that NEPA procedures are not applicable is reported in column F. For example: (1) when there is no NEPA analysis or documentation required because there is no agency discretion for NEPA analysis; (2) when NEPA is statutorily waived (e.g. Clean Water Act Section 511(c)); or (3) when the activity or project is under another process that is functionally equivalent to NEPA (functional equivalence is limited to certain EPA programs such as CERCLA); then the total number of such determinations will be reported on page 1 of the attached spreadsheet in the "NEPA Not Applicable" column with the total number of such projects and activities. There are no entries on page 2 for such projects and activities.

- The remaining columns on page 1 (G, H, I, J, and K) are automatically imported from page 2.

- The total obligations in column L reflect the amounts that will result in outlays, immediately or in the future, for a project or activity.

Use the following instructions to complete page 2 of the attached spreadsheet:

- The "Title/Program" from column C on page 1 is repeated in column B of page 2.

- The "Description of the Project/Activity" in column C is determined by the reporting department or agency and must be one that is unique and which clearly identifies the specific ARRA projects and activities (e.g., agency project identification number). Executive Branch departments and agencies can report on either individual projects and activities or groups of projects or activities when the projects or activities are similar and comply with NEPA in the same way.

- The "NEPA Action" is reported with the number of projects and activities in column D. The number is determined by the number of similar projects/activities that use the same NEPA action. For example, if 57 grants under the same grant program were categorically excluded, the grants can be reported on one line by entering "57" in column D. Agencies must explain the basis for grouping the projects/activities in the

cover memo (i.e., all grants are for similarly activities that are categorically excluded are reported on the same line and those that are pending completion are reported on a separate line).

- The type of NEPA action (i.e., ce, ea or eis) is reported in column E.

- The status of the NEPA action (i.e., pending, done, or withdrawn) is reported in column F.

    - Categorical Exclusion (ce) actions are reported as "pending" in those cases where a ce is not completed (i.e., done) on the end date of the report. The ce is reported as "done" after the determination has been made that there are no extraordinary circumstances or after finalizing the document when the agency prepares documentation for the ce. The cover memo must describe how the date was determined (e.g., the date the documentation was completed; the date the latest ce documentation for a group of similar projects/activities using the same ce was completed).

    - Environmental Assessment (ea) actions are reported as "pending" after initiation (e.g., public involvement as practicable, if not practicable then date of intra/inter-agency involvement). The ea is reported as "done" after completion of the EA/FONSI (and any associated mitigation action plan).

    - Environmental Impact Statement (eis) actions are reported as "pending" after the Notice of Intent is published. The eis is reported as "done" when the Record of Decision is completed (i.e., signed or published) following the final EIS or any supplemental NEPA review and documentation.

    - If any projects/activities are withdrawn or cancelled, then "withdrawn" is entered in column F.

- Columns G and H entries are automatically made; consequently, no information should be entered those columns.

- When the NEPA action is done, the date it is done is entered in column I. When a group of similar projects/activities using the same type of NEPA action is reported on one line, then the date of the most recently completed NEPA action is reported and the method for determining the reportable date must be described in the cover memo. When an agency uses a date other than the date a document is signed, the cover memo should explain the basis for the date.

- Enter "yes" or "no" in column J to indicate whether all applicable Federal environmental compliance requirements for the activity or project are completed – such as the requirements in the National Historic Preservation Act, Endangered Species Act, and Clean Water Act. Federal environmental compliance requirements

include those delegated to other governmental entities (e.g., CWA section 401 certifications).

Substantial delays in completing NEPA reviews and documentation should be reported to CEQ by sending an e-mail message to recovery@ceq.eop.gov that identifies the project, its current status, all known reasons for the delay, and a point of contact (name, title, organization, phone, cell phone and e-mail).

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NEPA ARRA Section 1609 Report Data (Page 1 of 2) [3rd Apr 0209]

Department or Agency Name:

End Date for this Report:

Submitter Name:

Submitter Contact Info (E-mail / Phone):

No.	Treasury Appropriation Fund Symbol	Title/Program	Total ARRA Appropriation for Projects and Activities	Number of ARRA Funded Projects / Activities	NEPA Not Applicable	Total Categorical Exclusion Actions	Total Environmental Assessment Actions	Total Environmental Impact Statement Actions	All NEPA Actions for the Recovery Act Funded Activity or Project	Number of projects withdrawn	Total Obligations for Projects and Activities
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Update | Projects & Activities

NEPA ARRA Section 1609 Report Data (Page 2 of 2) [drd Apr 02 09]

No.	Title/Program	Project/Activity Description	NEPA Action: Enter the number of NEPA actions with the same status and completion date. Enter ce for Categorical Exclusion; ea for Environmental Assessment; or eis for Environmental Impact Statement.		NEPA Status: Enter pending, done, or withdrawn.	Number of Completed NEPA Actions for the Recovery Act Funded Activity or Project	Number of Pending NEPA Actions for the Recovery Act Funded Activity or Project	Date NEPA is Done (mm/dd/yyyy)	All federal environmental reviews and documents are completed
			TOTAL ACTIONS:			TOTAL COMPLETED:	TOTAL PENDING:		
			Quantity	NEPA Action					Total Yes
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