

The CEQ Chairman, Mary B. Neumayr, signed the following notice on 6/21/19, and CEQ has submitted it for publication in the Federal Register (FR). While we have taken steps to ensure the accuracy of this pre-publication version of the draft guidance, it is not the official version. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's govinfo website (<https://www.govinfo.gov/app/collection/fr>) and on Regulations.gov (<https://regulations.gov>) in Docket No. CEQ-2019-0002. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

[3225-F9-P]

COUNCIL ON ENVIRONMENTAL QUALITY

Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions

[Docket No. CEQ-2019-0002]

RIN: 0331-ZA03

AGENCY: Council on Environmental Quality (CEQ).

ACTION: Draft guidance; request for comment.

SUMMARY: The Council on Environmental Quality (CEQ) is publishing draft guidance on how National Environmental Policy Act (NEPA) analysis and documentation should address greenhouse gas (GHG) emissions. This Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions, if finalized, would replace the final guidance CEQ issued on August 1, 2016, titled "Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews," which was withdrawn effective April 5, 2017 for further consideration pursuant to Executive Order 13783 of March 28, 2017, "Promoting Energy Independence and Economic Growth."

DATES: Comments should be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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ADDRESSES: Submit your comments, identified by docket identification (ID) number CEQ-2019-0002 through the Federal eRulemaking portal at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from <https://www.regulations.gov>. CEQ may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (e.g., audio, video) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.

Comments may also be submitted by mail. Send your comments to: Council on Environmental Quality, 730 Jackson Place, N.W., Washington, DC 20503, Attn: Docket No. CEQ-2019-0002.

The draft guidance is also available on the CEQ websites at <https://www.whitehouse.gov/ceq/initiatives/> and www.nepa.gov.

FOR FURTHER INFORMATION CONTACT: Edward A. Boling, Associate Director for the National Environmental Policy Act, Council on Environmental Quality, 730 Jackson Place, N.W., Washington, DC 20503. Telephone: (202) 395-5750.

SUPPLEMENTARY INFORMATION:

Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions

I. Introduction

This is a pre-publication version. CEQ has taken steps to ensure the accuracy of this version, but it is not the official version.

The Council on Environmental Quality (CEQ) provides this draft guidance memorandum¹ to assist Federal agencies in their consideration of greenhouse gas (GHG) emissions² when evaluating proposed major Federal actions in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., and the CEQ Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR parts 1500-1508 (“CEQ Regulations”). The purpose of this draft guidance is to facilitate compliance with NEPA by Federal agencies conducting reviews of proposed major Federal actions.³

II. Draft Guidance

NEPA requires that Federal agencies study the environmental impacts of major Federal actions significantly affecting the quality of the human environment. 42 U.S.C. 4332(2)(C). NEPA is a procedural statute that serves the twin purposes of ensuring that agencies consider the environmental consequences of their proposed actions and inform the public about their decision-making process. Agencies should analyze reasonably foreseeable environmental consequences of major Federal actions, but should not consider those that are remote or speculative. 40 CFR 1508.8.

A. Consideration of GHG Emissions in NEPA Analyses

¹ This draft 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 statutes, regulations, or any other legally binding requirement and is not legally enforceable. CEQ’s regulations implementing the procedural provisions of NEPA are available on www.nepa.gov. This guidance does not, and cannot, expand the range of Federal agency actions that are subject to NEPA.

² For purposes of this draft guidance, CEQ defines GHGs as carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulfur hexafluoride (SF₆) and nitrogen trifluoride (NF₃).

³ This draft guidance is intended to replace CEQ’s August 2016 “Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews” (81 FR 51866, Aug. 5, 2016), which was withdrawn pursuant to Executive Order 13783 on April 5, 2017 (82 FR 16576).

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Under CEQ regulations and the “rule of reason” that bounds all NEPA analysis, impacts of a proposed action should be discussed in proportion to their significance, and there should only be brief discussion of issues that are not significant.⁴ As with all NEPA analyses, the rule of reason permits agencies to use their expertise and experience to decide how and to what degree to analyze particular effects. Agencies preparing NEPA analyses need not give greater consideration to potential effects from GHG emissions than to other potential effects on the human environment.

A projection of a proposed action’s direct and reasonably foreseeable indirect GHG emissions may be used as a proxy for assessing potential climate effects. Direct effects are caused by the action and occur at the same time or place. 40 CFR 1508.8(a). Indirect effects are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. 40 CFR 1508.8(b). Following the rule of reason, agencies should assess effects when a sufficiently close causal relationship exists between the proposed action and the effect. A “but for” causal relationship is not sufficient.

Agencies should attempt to quantify a proposed action’s projected direct and reasonably foreseeable indirect GHG emissions when the amount of those emissions is substantial enough to warrant quantification, and when it is practicable to quantify them using available data and GHG quantification tools.⁵ Agencies should consider whether

⁴ See 40 CFR 1500.1(b) (“Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.”); 40 CFR 1502.2(b) (“Impacts shall be discussed in proportion to their significance.”); 40 CFR 1502.15 (“Data and analyses in a statement shall be commensurate with the importance of the impact . . .”); 40 CFR 1508.27 (defining “significantly”).

⁵ For a listing of available GHG accounting methods and tools that agencies may consider using in their NEPA reviews see CEQ’s Greenhouse Gas Accounting Tools webpage (<https://ceq.doe.gov/guidance/ghg-accounting-tools.html>).

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quantifying a proposed action's projected reasonably foreseeable GHG emissions would be practicable and whether quantification would be overly speculative. If an agency concludes that quantification would not be practicable or would be overly speculative, it should explain its decision.

Where GHG inventory information is available, an agency may also reference local, regional, national, or sector-wide emission estimates to provide context for understanding the relative magnitude of a proposed action's GHG emissions. This approach, together with a qualitative summary discussion of the effects of GHG emissions based on an appropriate literature review, allows an agency to present the environmental impacts of a proposed action in clear terms and with sufficient information to make a reasoned choice among the alternatives. Such a discussion satisfies NEPA's requirement that agencies analyze the cumulative effects of a proposed action because the potential effects of GHG emissions are inherently a global cumulative effect. Therefore, a separate cumulative effects analysis is not required.

When an agency determines that the tools, methods, or data inputs necessary to quantify a proposed action's GHG emissions are not reasonably available, or it otherwise would not be practicable, the agency should include a qualitative analysis and explain its basis for determining that quantification is not warranted. Agencies are not required to quantify effects where information necessary for quantification is unavailable, not of high quality, or the complexity of identifying emissions would make quantification overly speculative. 40 CFR 1502.22. A qualitative analysis may rely on sector-specific descriptions of the GHG emissions for the category of Federal action that is the subject of

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the NEPA analysis. Agencies need not undertake new research or analysis of potential climate effects and may rely on available information and relevant scientific literature.

In their NEPA analyses, agencies should consider reasonable alternatives to the proposed action and discuss the short- and long-term effects and benefits of those alternatives. 40 CFR 1502.14 and 1508.9(b). NEPA does not require agencies to adopt mitigation measures. However, comparing alternatives based on potential effects due to GHG emissions, along with other potential effects and economic and technical considerations, can help agencies differentiate among alternatives. 40 CFR 1502.14 and 1502.16(e).

Consideration of effects on the quality of the human environment due to GHG emissions does not require agencies to expand the range of Federal agency actions subject to NEPA or develop new NEPA implementing procedures. As required by CEQ regulations, agencies shall conduct NEPA analyses based on current scientific information and methods to the extent reasonably available and practicable. 40 CFR 1500.1(b), 1502.22, and 1502.24. In preparing their NEPA analyses, agencies can incorporate by reference pre-existing plans, inventories, reviews, assessments, and research whenever appropriate. Agencies may also use programmatic analyses, programmatic approaches, and tiering to address emission considerations (including GHG emissions) that are relevant to the stage of decisionmaking for the proposed action.

B. Considerations Relating to the Affected Environment

Analyses under NEPA should include a description of the affected environment to provide a basis for comparing the current and the reasonably foreseeable future state of the environment as affected by the proposed action and its reasonable alternatives. When

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relevant, agencies should consider whether the proposed action would be affected by foreseeable changes to the affected environment under a reasonable scenario. In accordance with NEPA's rule of reason and standards for obtaining information regarding reasonably foreseeable effects on the human environment, agencies need not undertake new research or analysis of potential changes to the affected environment in the proposed action area and may summarize and incorporate by reference appropriate scientific literature. 40 CFR 1502.21 and 1502.24.

C. Use of Cost-Benefit Analyses

NEPA and CEQ's implementing regulations do not require agencies to monetize costs and benefits of a proposed action. CEQ regulations provide that agencies need not weigh the merits and drawbacks of particular alternatives in a monetary cost-benefit analysis. 40 CFR 1502.23.⁶ For this reason, an agency need not weigh the effects of the various alternatives in NEPA in a monetary cost-benefit analysis using any monetized Social Cost of Carbon (SCC) estimates and related documents (collectively referred to as "SCC estimates"),⁷ or other similar cost metrics.⁸

⁶ Section 1502.23 of the CEQ regulations also provides that monetary cost-benefit analysis "should not be [used] when there are important qualitative considerations."

⁷ In February of 2010, the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG) published a "Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis - Under Executive Order 12866." These documents were updated a number of times. See "Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (May 2013);" "Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (November 2013);" "Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (July 2015);" "Addendum to the Technical Support Document for Social Cost of Carbon: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide (August 2016);" and "Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (August 2016)."

⁸ Pursuant to Executive Order 13783 of March 28, 2017, titled "Promoting Energy Independence and Economic Growth," the IWG was disbanded, and the estimates were directed to be withdrawn as no longer representing government policy. 82 FR 16093, Mar. 31, 2017. Agencies were directed to ensure, to the extent permitted by law, that any such estimates are consistent with the guidance contained in the OMB Circular A-4 of September 17, 2003, which was issued following peer review and public comment and has

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Further, the SCC estimates were developed for rulemaking purposes to assist agencies in evaluating the costs and benefits of regulatory actions, and were not intended for socio-economic analysis under NEPA or decision-making on individual actions, including project-level decisions. If an agency does consider costs and benefits that are relevant to the choice among environmentally different alternatives for a proposed action, such as in a rulemaking, the agency should incorporate by reference or append such analyses to the environmental impact statement as an aid in evaluating the environmental consequences. 40 CFR 1502.21 and 1502.23. When using a monetary cost-benefit analysis, just as with tools to quantify emissions, the agency should disclose the assumptions and levels of uncertainty associated with such analysis.

Finally, CEQ's regulations require consideration of "effects," including "ecological . . . , aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative." 40 CFR 1508.8(b). There may be some effects that are more capable of monetization or quantification, such as employment or other socio-economic impacts, and that the agency may determine are useful to include in its NEPA review. Monetization or quantification of some aspects of an agency's analysis does not require that all effects, including potential effects of GHG emissions, be monetized or quantified. Where an agency decides to quantify some effects but not others, the agency should explain the choices it has made in its analysis.

III. OMB Review

been widely accepted as reflecting the best practices for conducting cost-benefit analyses for rulemakings. Any such analysis should focus on the impacts that accrue to citizens and residents of the United States.

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Consistent with OMB's "Agency Good Guidance Practices" (72 FR 3432, Jan. 25, 2007), the draft guidance document was submitted to OMB for review.

(Authority: 42 U.S.C. 4332, 4342, 4344 and 40 CFR Parts 1500, 1501, 1502, 1503, 1505, 1506, 1507, and 1508)

Dated: [Month] _____, 2019.

Mary B. Neumayr,
Chairman.