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Consideration of Greenhouse Gas Emissions/Climate Change: Council on Environmental Quality Issues Interim National Environmental Policy Act Guidance

01/11/2023

The Council on Environmental Quality (“CEQ”) published in the January 9th Federal Register a document titled:

National Environmental Policy act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change (“Interim Guidance”)

See 88 Fed Reg. 1196.

CEQ was established in 1970 (as part of the Executive Office of the President) with its duties including oversight of the federal agency implementation of the National Environmental Policy Act (“NEPA”). CEQ issues both regulations and guidance to provide federal agencies its views on the appropriate interpretation of NEPA’s procedural requirements. CEQ regulations are generally viewed by the federal agencies as guideposts for compliance.

CEQ states it is issuing the draft Interim Guidance to assist agencies in analyzing greenhouse gas (“GHG”) and climate change effects of their proposed actions under NEPA. The guidance is being issued as Interim Guidance so that agencies can utilize it immediately. However, CEQ is seeking comments on the draft guidance and intends to either revise it in response to public comments or produce it in final form. The intent is also stated to include improving the efficiency and consistency of reviews of proposed federal actions for:

- Federal agencies
- Decisionmakers
- Project proponents
- Public

Note that NEPA requires federal agencies to assess environmental effects of their proposed actions prior to making decisions. The range of actions covered by NEPA has typically been broadly defined to include as examples:

- Making decisions by federal agencies on permit applications
- Federal land management actions

- Construction and/or funding highways and other publicly owned facilities

NEPA was arguably designed to force mission-oriented agencies to consider the environmental impacts of a particular decision or activity in addition to other objectives. As a result, the statute requires that federal agencies include environmental values and issues in their decision-making process. This mandate is accomplished by agency consideration of the environmental impact on proposed actions and reasonable alternatives to those actions.

NEPA differs from action forcing environmental regulatory programs such as the Clean Air Act or Clean Water Act. It does not impose substantive mandates. Instead it is limited to requiring federal agencies to meet certain procedural requirements. Nevertheless, the failure to comply with NEPA's procedural mandates can result in an activity or project being enjoined.

The draft GHG Interim Guidance notes by way of introduction that when conducting climate change analyses and NEPA reviews, agencies should consider:

- The potential effects of a proposed action on climate change, including by assessing both GHG emissions and reductions from the proposed action; and
- The effect of climate change on a proposed action and its environmental impacts

Key recommendations summarized in the Interim Guidance include:

- Recommending that agencies leverage early planning processes to integrate GHG emissions and climate change considerations into the identification of proposed actions, reasonable alternatives (as well as the no-action alternative), and potential mitigation and resilience measures;
- Recommending that agencies quantify a proposed action's projected GHG emissions or reductions for the expected lifetime of the action, considering available data and GHG quantification tools that are suitable for the proposed action;
- Recommending that agencies use projected GHG emissions associated with proposed actions and their reasonable alternatives to help assess potential climate change effects;
- Recommending that agencies provide additional context for GHG emissions, including through the use of the best available social cost of GHG (SC-GHG) estimates, to translate climate impacts into the more accessible metric of dollars, allow decision makers and the public to make comparisons, help evaluate the significance of an action's climate change effects, and better understand the tradeoffs associated with an action and its alternatives;
- Discussing methods to appropriately analyze reasonably foreseeable direct, indirect, and cumulative GHG emissions;
- Guiding agencies in considering reasonable alternatives and mitigation measures, as well as addressing short and long-term climate change effects;
- Advising agencies to use the best available information and science when assessing the potential future state of the affected environment in NEPA analyses and providing up to date examples of existing sources of scientific information;
- Recommending agencies use the information developed during the NEPA review to consider reasonable alternatives that would make the actions and affected communities more resilient to the effects of a changing climate;
- Outlining unique considerations for agencies analyzing biogenic carbon dioxide sources and carbon stocks associated with land and resource management actions under NEPA;
- Advising agencies that the "rule of reason" inherent in NEPA and the CEQ Regulations should guide agencies in determining, based on their expertise and experience, how to consider an environmental effect and prepare an analysis based on the available information; and
- Reminding agencies to incorporate environmental justice considerations into their analyses of climate-related effects, consistent with Executive Orders 12898 and 14008.

A copy of the Interim Guidance can be downloaded [here](#).

