

## New Climate Guidance Issued to Federal Agencies Conducting Environmental Impact Analyses

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### Overview

On January 9, 2023, the Council for Environmental Quality (“CEQ”) published interim National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change (hereafter, “guidance” or “GHG Guidance”).<sup>1</sup> CEQ intends for agencies to apply the guidance now even as CEQ seeks public comment on it.<sup>2</sup> The guidance aims to establish best practices to ensure that Federal agencies conduct detailed analyses of greenhouse gas emissions and climate change when evaluating proposed major Federal actions in accordance with the National Environmental Policy Act (“NEPA”) and CEQ’s Regulations Implementing the Procedural Provisions of NEPA.<sup>3</sup> The guidance states that these analyses should (1) quantify a proposed action’s GHG emissions; (2) place GHG emissions in appropriate context and disclose relevant GHG emissions and relevant climate impacts; and (3) identify alternatives and mitigation measures to avoid or reduce GHG emissions.

The long-awaited GHG Guidance does not set a numerical threshold for significant impact under NEPA, but it emphasizes achievement of national and other climate objectives. The guidance also stresses monetization of climate-related impacts (social cost of carbon) and consideration of alternatives to fossil energy production and transport, mitigation of climate-related impacts, and resilience and adaptation to climate-related vulnerability. Also prominent in the guidance is consideration of disparate impacts to environmental justice communities.

### GHG Guidance

#### Quantifying a Proposed Action’s GHG Emissions

The guidance explains that agencies should quantify the reasonably foreseeable direct and indirect GHG emissions of their proposed actions and reasonable alternatives (including the no-action alternative) to ensure that each agency adequately considers the incremental contribution of its action to climate change. CEQ recommends that agencies quantify gross emissions increases or reductions (including direct and indirect emissions) individually by each

GHG, as well as aggregated in terms of total **CO<sub>2</sub>** by factoring in each pollutant's global warming potential ("GWP"). CEQ further recommends that agencies quantify the proposed action's total net GHG emissions or reductions (both by pollutant and by total CO<sub>2</sub> emissions) relative to baseline conditions. Finally, CEQ recommends that "[w]here feasible . . . [agencies] should present annual GHG emissions increases or reductions, as well as net GHG emissions over the projected lifetime of the action, consistent with existing best practices."<sup>4</sup> CEQ emphasizes that agencies should be guided by the rule of reason when quantifying emissions. The guidance does not set a "significance" threshold that would trigger the requirement to prepare an EIS.

### **Disclosing and Providing Context for a Proposed Action's GHG Emissions and Climate Effects**

In the eyes of CEQ, quantifying emissions and summarizing this information in a NEPA document is not sufficient. Agencies should also disclose and provide context for GHG emissions and climate effects to help decision makers and the public understand a proposed action's potential GHG emissions and climate change effects. CEQ provides a list of best practices for disclosing and contextualizing quantified GHG emissions:<sup>5</sup>

- Use the Social Cost of Greenhouse Gases ("SC-GHG") to estimate the dollar value of impacts associated with each type of GHG emission;
- Explain how the proposed action and alternatives would help meet or detract from achieving climate action goals and commitments, and discuss whether and to what extent the proposal's reasonably foreseeable GHG emissions are consistent with GHG reduction goals;
- Summarize and cite to available scientific literature to help explain the real-world effects associated with an increase in GHG emissions that contribute to climate change; and
- Provide accessible comparisons or equivalents to help the public and decision makers understand GHG emissions in more familiar terms (i.e., household emissions per year, annual average emissions from a certain number of cars on the road, etc.).

CEQ explicitly states that monetizing the "social cost" of GHG emissions as recommended does not require the agency also to monetize the social *benefits* of the proposed action, nor does it have to compare estimated costs and benefits.<sup>6</sup> The guidance also emphasizes the use of "substitution analysis" to discern the GHG-related changes associated with shifting energy sources if the proposed or alternative actions occurred.<sup>7</sup>

### **Identifying Reasonable Alternatives and Potential Mitigation Measures**

The GHG Guidance directs agencies to use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize GHG emissions or climate change effects. CEQ recognizes that reasonable alternatives must be consistent with the purpose and need of the proposed action, and that agencies are not required to select the

alternative with the lowest net GHG emissions or climate costs or the greatest net climate benefits.<sup>8</sup> However, “in line with the urgency of the climate crisis,” agencies should identify the alternative with the lowest net GHG emissions or the greatest net climate benefits among the alternatives they assess and should “use the NEPA process to make informed decisions grounded in science that are transparent with respect to how Federal actions will help meet climate change goals and commitments, or alternately, detract from them.”<sup>9</sup> When quantifying reasonably foreseeable emissions associated with the proposed action or alternatives, CEQ directs agencies to include reasonably foreseeable direct and indirect GHG emissions of their proposed actions. CEQ provides that processing, refining, transporting, and end-use of the fossil fuel being extracted, including combustion of the resource to produce energy, would constitute indirect emissions of fossil fuel extraction.<sup>10</sup>

CEQ encourages agencies to mitigate GHG emissions “to the greatest extent possible.”<sup>11</sup> It instructs agencies to consider potential mitigation measures by determining whether impacts from a proposed action or alternatives can be avoided, considering whether adverse impacts can be minimized, and rectifying or requiring compensation for residual impacts where unavoidable. CEQ considers available mitigation that avoids, minimizes, or compensates for GHG emissions and climate change effects to include measures like renewable energy generation and energy storage, carbon capture and sequestration, and capturing GHG emissions such as methane.<sup>12</sup>

## Examples

The guidance provides a number of examples as to how it would work in specific scenarios. For example, the guidance notes that “absent exceptional circumstances,” construction of renewable energy projects “should not warrant a detailed analysis of lifetime GHG emissions.”<sup>13</sup> CEQ uses natural gas pipelines as an example of consideration of indirect effects, stating that they create the “economic conditions for additional natural gas production and consumption, including both domestically and internationally, which produce indirect (both upstream and downstream) GHG emissions that contribute to climate change.”<sup>14</sup> When discussing the need to analyze the effects of climate change on a proposed action (and not just the impacts of the proposed action on climate change), CEQ gives as an example a project that may require water from a source with diminishing quantities available and advises the agency consider such issues to “inform decisions on siting, whether to proceed with and how to design potential actions and reasonable alternatives, and to eliminate or mitigate effects exacerbated by climate change.”<sup>15</sup>

## Conclusion

Robust comments are likely to be filed to further inform CEQ’s effort on the GHG Guidance. Nevertheless, CEQ has directed agencies to apply the guidance to all new proposed actions and

to consider applying it to proposed actions that are currently under NEPA review. Comments on the interim guidance are due March 10, 2023.

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1. CEQ, National Environmental Policy Act Guidance on Consideration of Greenhouse Gas, 88 Fed. Reg. 1,196 (Jan. 9, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-01-09/pdf/2023-00158.pdf> (“GHG Guidance”).

2. *Id.*

3. Note that CEQ has announced its intention to further revise its existing NEPA regulations in 2023, after having issued an earlier round of regulatory amendments in 2022. See CEQ Fall 2022 Regulatory Agenda, National Environmental Policy Act Implementing Regulations Revisions Phase 2, RIN No. 0331-AA07, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=0331-AA07>; CEQ, National Environmental Policy Act Implementing Regulations Revisions, 87 Fed. Reg. 23,453 (Apr. 20, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-04-20/pdf/2022-08288.pdf>.

4. GHG Guidance at 1,201.

5. *Id.* at 1,202-03.

6. *Id.* at 1,203, 1,211.

7. *Id.* at 1,205.

8. *Id.* at 1,204.

9. *Id.*

10. *Id.*

11. *Id.* at 1,206.

12. *Id.*

13. *Id.* at 1,202.

14. *Id.* at 1,204 n.86.

15. *Id.* at 1,208.