

Guidance on Treatment of Greenhouse Gases Under NEPA

Link: <https://www.federalregister.gov/documents/2019/06/26/2019-13576/draft-national-environmental-policy-act-guidance-on-consideration-of-greenhouse-gas-emissions>

CEQ's Draft Guidance On Treatment Of GHG Under NEPA Would Replace CEQ's Final Guidance issued On August 1, 2016, Which Had Been Withdrawn April 5, 2017 Pursuant To EO 13783. "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of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews,' which was withdrawn effective April 5, 2017 for further consideration pursuant to Executive Order 13783 of March 28, 2017, 'Promoting Energy Independence and Economic Growth.'" [Federal Register -- Notice, [6/26/19](#)]

CEQ's 2019 Draft Guidance Provided Little Clarity To Federal Agencies On How To Weigh GHG Emissions And Climate Impacts In NEPA Reviews And Appeared To Encourage Agencies To Avoid Those Considerations Entirely. "In June 2019, the White House Council on Environmental Quality (CEQ) published draft guidance on the treatment of greenhouse gases under the National Environmental Policy Act (NEPA). The draft guidance provided little clarity to federal agencies on how to weigh greenhouse gas emissions and climate impacts in NEPA reviews, and instead appeared to encourage agencies to avoid such considerations altogether, as state attorneys general noted in comments filed in August 2019. The administration has since moved ahead with a broad overhaul of NEPA implementing regulations, but the guidance remains unfinalized and its fate is unclear." [Midnight Watch – NYU School of Law, Accessed [12/15/20](#)]

Impact

CEQ's 2019 Draft Guidance Proposed A More Subjective Approach To Federal Agencies Conducting Reviews Of Major Federal Actions Relative To The 2016 Guidance. "CEQ's 2019 draft guidance marks a dramatic shift from the heavily detailed approach outlined in 2016. CEQ's draft guidance proposes a more subjective approach to federal agencies conducting reviews of "major federal actions" and explicitly recognizes the significant obstacles in quantifying the effect of GHG emissions under NEPA. For example, the draft guidance clarifies that the social cost of carbon (SCC) is not intended for NEPA decision-making, and states, "SCC estimates were developed for rulemaking purposes to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 chooses to consider costs and benefits when analyzing different alternatives, the guidance directs that the agency should incorporate this analysis and disclose all assumptions and uncertainty associated with the analysis." [Environmental Law And Policy, [7/3/19](#)]

CEQ's Draft Guidance Required A Description Of The Impacted Environment And Reasonably-Foreseeable Future State Of The Environment By The Proposed Action And

It's Reasonable Alternatives. “Similarly, if the agency analyses the impact of GHG emissions in their NEPA review, the draft guidance requires a description of the impacted environment and the reasonably-foreseeable future state of the environment by the proposed action and its reasonable alternatives. Because GHG emissions are often quantified on a global rather than a local scale, analysis of GHG emissions for a specific project will be inherently speculative. The draft guidance explains that under NEPA, only actions that significantly affect the quality of the human environment should be considered. ‘Significantly’ is defined at 40 C.F.R. §1508.27. This section explains that in the case of a site-specific action, the significance of an action would depend on the effect on the specific locale rather than a global perspective.” [Environmental Law And Policy, [7/3/19](#)]

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The 2019 Guidance Was Speculated To Lead To A Reduction In Effort To Analyze Climate Change Effects Of Proposed Actions By Many Agencies. “This proposed new guidance is much shorter and may lead to a reduction in effort to analyze climate change effects of proposed actions by many agencies. The 2019 draft guidance is strikingly shorter than the 2016 guidance and reduces the amount of guidance from the CEQ by nearly 31 pages of discussion. While this proposed shorter guidance may save trees during printing, our take is that it reduces the volume of examples and detail available to agencies to use GHG as a proxy for climate change. So what does this mean? We may see increasing differences in the discussions of GHG and climate change in documents from various federal agencies.” [Scout Environmental, [9/5/19](#)]

The 2019 Draft Guidance Was “Strikingly Shorter” Than the 2016 Guidance – Reducing The Amount Of Guidance From CEQ By Nearly 31 Pages Of Discussion. “This proposed new guidance is much shorter and may lead to a reduction in effort to analyze climate change effects of proposed actions by many agencies. The 2019 draft guidance is strikingly shorter than the 2016 guidance and reduces the amount of guidance from the CEQ by nearly 31 pages of discussion. While this proposed shorter guidance may save trees during printing, our take is that it reduces the volume of examples and detail available to agencies to use GHG as a proxy for climate change. So what does this mean? We may see increasing differences in the discussions of GHG and climate change in documents from various federal agencies.” [Scout Environmental, [9/5/19](#)]

The Guidance Was Expected To Lead To More Inconsistencies Between Agencies And Regions In Their Discussion Of Climate Change. “Will this lead to more inconsistencies between agencies and regions in their discussion of climate change? Yes. As in the past, agencies will likely develop their own guidance documents to address GHGs and climate change in their NEPA documents – or – continue to use their existing guidance. While overall

the approach to analysis is anticipated to be similar and in keeping with the CEQ guidance, we anticipate subtle agency differences.” [Scout Environmental, [9/5/19](#)]

The Guidance Was Expect To Make It Harder For Agencies To Define How They Want To Approach The Level Of Detail For Discussion Of Climate Change As A Result Of Their Actions. “Does this make it even harder for agencies to define how they want to approach the level of detail for discussion of climate change as a result of their actions? Definitely. The lack of a discrete quantifiable threshold leaves it up to each agency to defined what constitutes a significant GHG/climate change impact.” [Scout Environmental, [9/5/19](#)]

The 2019 Guidance Reduced Details Available To Federal Agencies. “Reduces details available to federal agencies. The 2019 draft guidance document reduces the details available to agencies to implement recommendations about utilizing GHG emissions as a proxy for assessing potential climate change affects from the proposed action to just one sentence. The 2019 draft guidance also is largely silent about consideration of mitigation and the detail as to what climate change indicators and resiliency (i.e. sea level rise planning) might be considered as part of the proposed action.” [Scout Environmental, [9/5/19](#)]

The 2019 Guidance Didn’t Include The Requirement To evaluate Mitigation Measures And Carbon Sequestration. “Evaluating mitigation measures and carbon sequestration is not included. The requirement to evaluate mitigation measures and carbon sequestration is absent in the 2019 draft guidance. The biggest affect may be to forestry projects, as the new guidance is largely silent about consideration of carbon sequestration as a reasonably foreseeable result of a proposed action. Planting of trees and other vegetation is being studied extensively by scientific groups as ways to reduce GHG concentrations in the atmosphere. Now there is no need for federal agencies not concerned with emissions to evaluate the need for carbon sequestration as part of their proposed action. It’s unclear if federal agencies whose proposed actions do have substantial emissions (also undefined) would include sequestration into their analyses.” [Scout Environmental, [9/5/19](#)]

Comments by state AGs

Attorneys General From 18 States And Washington DC Claimed CEQ’s 2019 Draft Guidance Was Inconsistent With NEPA And Should Be Withdrawn. “CEQ’s Draft Guidance is inconsistent with the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 et seq., and should be withdrawn for several reasons. First, although the Draft Guidance focuses on greenhouse gas (“GHG”) emissions, it fails to address climate change and its impacts. NEPA does not permit, and CEQ may not direct, agencies to ignore the well-documented impacts of climate change in their environmental impact analyses.” [Comment Regarding Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions, 84 Fed. Reg. 30,097, [8/26/19](#)]