

On August 1, the White House Council on Environmental Quality (CEQ) released guidelines that will impact all entities operating in the US, including the private sector and state and local governments, as well as entities that require authorizations for decisions from the US and international agencies in which the US participates. Public and private entities need to understand that this guidance adds a very substantial additional analytical requirement to agency reviews under NEPA.

## Summary

The CEQ released a 34-page final guidance advising federal agencies on how to consider climate change impacts in National Environmental Policy Act (NEPA) reviews. This is the first CEQ guidance specifically addressing requirements for consideration of impacts of direct and indirect greenhouse gas emissions (GHGs) and climate change in the decision-making process in any federal action. Those actions include assessing projects, permits and plans proposed by public and private entities, as well as major contracts, commitments of federal resources, loan guarantees -- essentially anything that requires a federal action. Examples include the siting and construction of utility-scale solar, the renewal of a hydroelectric or nuclear permit, a license to operate, a grant of a right of way access across federal lands, the renewal of a coal lease, etc. Some EPA actions are considered to be inherently protective of the environment and do not require NEPA review. However, the guidance emphasizes its applicability to all "site-specific projects, rulemaking actions, permitting decisions, and land and resource management decisions."

In general, the guidance is intended to:

- "Advise agencies to quantify projected greenhouse gas emissions of proposed federal actions whenever the necessary tools, methodologies, and data inputs are available." (For those projects/actions where GHG cannot be measured, the guidance directs agencies to include a qualitative analysis in the NEPA document and explain the basis for determining that quantification is not reasonably available);
- "Encourage agencies to draw on their experience and expertise to determine the appropriate level (broad, programmatic or project- or site-specific) and the extent of quantitative or qualitative analysis required to comply with NEPA;
- Counsel agencies to consider alternatives that would make the action and affected communities more resilient to the effects of a changing climate; and
- Remind agencies to use existing information and science when assessing proposed actions."

## Scope of Guidance

The guidance aims to ensure federal agencies examine both sides of a decision – taking into consideration "both the effects of a proposed action on climate change, as indicated by its estimated greenhouse gas emissions, and the effects of climate change on a proposed action." As such, what is reviewed is not only a project's impact on climate change, but also what impact climate change may have on a project. For example, the requirements include not only measuring GHG emissions from a given project or action, but also seek "the analysis of a project considered vulnerable to the effects of climate change such as increasing sea level, drought, high intensity precipitation events, increased fire risk, or ecological change." The Natural Resources Defense Council stated, "CEQ's final guidance is a game changer. Now federal agencies must fully and properly analyze the climate impacts of their proposed actions before deciding on how to proceed. They shouldn't approve mines that will destroy the climate, or bridges that will get washed away."

The guidance leaves the decision up to the federal agency to define the scope of the "affected environment." In addition to cumulative effects, agencies are also directed to take into consideration the short- and long-term effects of a project. The guidance allows for agencies to offset these effects by considering "co-benefits of the proposed action, alternatives, and potential mitigation measures for human health, economic and social stability, ecosystem services, or other benefit that increases climate change preparedness or resilience."

## Updating NEPA

NEPA was passed by Congress in 1970 in order to provide full consideration of environmental issues in connection with all major federal decisions. NEPA requires that federal agencies prepare environmental assessments (EAs) and environmental impact statements (EISs) on proposed federal actions (e.g., approving infrastructure, bridges, highway projects, etc.) in order to assess projects that could impact the environment. NEPA applies to any project for which a federal permit is required – regardless of whether the project uses federal funds or not and regardless of whether the project involves federal lands. There are three levels of NEPA analysis: a Categorical Exclusion (CE); an Environmental Assessment (EA); or an Environmental Impact Statement (EIS). The guidance is careful to note that "CEQ does not expect that implementation of this guidance will require agencies to develop new NEPA implementing procedures." However, CEQ recommends that "agencies review their NEPA procedures and propose any updates they deem necessary or appropriate to facilitate their consideration of GHG emissions and climate change."

## Timing

While the guidance is effective immediately, CEQ is allowing federal agencies to decide for themselves whether or not to apply the guidance to projects currently in queue for decision-making. However, there are no claw-back provisions that would allow an agency to review past decisions in light of the new guidance.

## Accelerated Projects

Some projects will fall under the auspices of the recently passed Fixing America's Surface Transportation (FAST) Act. The FAST Act encourages agencies to develop expedited environmental reviews for selected projects considered critical to US infrastructure, such as transportation (including highways and roadways), transmission and renewable energy projects. Nevertheless, CEQ's new guidance will have to be adhered to even for these potentially expedited projects.

## Demonstrating Cost Benefit Analyses

Under the guidance, as the life-cycle of a project is taken into consideration, certain projects will come in to the review process with an added benefit, which may outweigh some or all of the environmental costs of siting and constructing the project. For example, a utility-scale solar project may be able to prove a net reduction in GHGs for the environment over time. Other projects may have to work harder to show how their benefits may offset their GHG emissions over the life of the project, such as newly proposed or renewal permit sought for a combined cycle (gas-fired) or coal-fired generation plant.

## Acclimating to the New Requirements

The new guidance has the potential to add substantial time and expense to all environmental reviews for companies and other entities currently undergoing the NEPA process – and for future actions. However, it will likely take some time for agencies to acclimate their review processes to the new requirements. Interested persons and companies would help themselves both by developing internal off-the-shelf information to accommodate the new review requirements and by working with federal agencies to develop efficient methodologies to expedite consideration on this issue, minimize any additional review time and add clarity to the process.

## Final Guidance

CEQ's Final Guidance can be found [here](#).

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