

Climate Daily News

CEQ Floats New Draft NEPA Guide To Assess Climate Impacts On Projects

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The White House Council on Environmental Quality (CEQ) has issued new draft guidance for assessing greenhouse gas (GHG) emissions under the National Environmental Policy Act (NEPA), adding first-time language that requires the analyses to also include the impact of climate change on projects – a measure that is being welcomed by advocates, who are also pressing CEQ to finalize the long-delayed NEPA GHG guide.

While advocates have also long urged CEQ to craft policy on how to conduct such “reverse environmental impact statements (EIS),” they may be disappointed that the [Dec. 18 draft guide](#) allows significant agency discretion and autonomy that could impair consistent reviews.

Despite the flexibilities, Sen. Sheldon Whitehouse (D-RI) and other advocates are welcoming the draft's release. “The effects of climate change on our communities and on public health is serious, and should always be considered when we evaluate major federal projects,” Whitehouse said in a statement.

The new draft drew swift criticism from Republicans including Sen. David Vitter (LA), ranking member of the Senate environment committee. “The Obama administration is attempting to increase federal authority beyond NEPA's original intent and further slow down job-creating projects in this last-ditch effort to appease its far-left environmental base right before the holidays. Not only did this administration fail to learn anything from the recent elections, but CEQ apparently wants to move forward with guidance that is certain to slow projects and make building anything in this country more expensive. This is certain to hurt job creation and economic growth,” he said, noting that he and other GOP senators this spring asked CEQ to withdraw the original draft guide, released in 2010.

The revised draft is also likely to draw criticism from business groups, like the U.S. Chamber of Commerce, which have long sought to scale back and “streamline” NEPA and other environmental reviews.

The new draft guide, which CEQ will accept comment on for 60 days, updates the 2010 draft and incorporates comments received on the earlier draft, according to CEQ.

The most significant change is the addition of language for how agencies should consider the “implication of climate change and for the environmental effects of a proposed action.” CEQ adds, however, that “Agencies continue to have substantial discretion in how they tailor their NEPA processes to accommodate the concerns raised in this guidance,” and that the “guidance is designed to be implemented without requiring agencies to develop new NEPA implementing procedures.”

CEQ in a statement notes that the new draft was requested by the President's Task Force on Climate Preparedness and Resilience in its November recommendations. However, the group also asked CEQ to [finalize its original NEPA guide](#), which details how agencies should assess projects' GHG impacts, which has been pending since 2010. CEQ says in the statement that the new draft updates the earlier guide but does not say when it intends to finalize the guidance.

The guide's new language on reverse EISs details how agencies should analyze and mitigate a project's impact on climate change, and will encourage agencies to consider the impact of climate on projects, as well as the other way around.

One advocate who has been pressing for reverse EISs calls the new draft “an important step in the right direction. . . . It is especially positive that CEQ is now calling, not only for analysis of the effects that projects will have on [GHGs] but also for examination of how future climate conditions will affect projects. If a project is to be built on a coastline and is expected to last for 50 years, the [EIS] would need to look at expected sea levels in 50 years so that the planners can make sure the project will withstand those conditions This is entirely sensible, and in the end can save a great deal of public money.”

Some agencies are already beginning to take such steps even in the absence of the guide. For example, the Federal Energy Regulatory Commission (FERC) Nov. 24 asked the developer of a planned liquified natural gas (LNG) export facility in Louisiana to address the [impacts of climate on its project](#) in the EIS, including storm surge due to extreme hurricanes, sea-level rise and flooding.

FERC made the request after the Sabin Center for Climate Change Law (SCCCL) asked FERC to do so -- one of several LNG projects where SCCCL is pressing FERC to consider a reverse EIS. And SCCCL source said recently that other agencies already conduct such reviews.

Consistent Reviews

The NEPA guide could add more consistency administration-wide. However, CEQ notes in its fact sheet that the draft also will allow agencies to determine the appropriate level of NEPA review that is required, including programmatic or project-specific, and quantitative or qualitative analysis.

It retains its prior GHG emissions threshold for conducting reviews of 25,000 metric tons per year as one that would suggest a quantitative analysis, while urging agencies to use information developed under the reviews "to consider alternatives that are more resilient to the effects of a changing climate."

"[T]he particular impacts of climate change on vulnerable communities may be considered in the design of the action or the selection among alternatives so that the proposed action will be more resilient and sustainable and thereby have lesser impacts on those communities," it says. "For example, chemical facilities located near the coastline could have increased risk of spills or leakages due to sea level rise or increased storm surge, putting local communities and environmental resources at greater risk. Finally, considering climate change effects can help ensure that agencies do not generate additional GHGs – or expand additional time and funds – if the project has to be replaced, repaired or modified."

In addition to adding reverse EIS language, the draft also discusses direct, indirect and cumulative impacts of a proposed action's "reasonably foreseeable emissions and effects," highlights the consideration of reasonable alternatives and points to the need to consider both short- and long-term effects and benefits for alternatives and mitigation to lower emissions.

Programmatic Reviews

CEQ also released a second Dec. 18 document, [a final guidance](#) for how agencies should perform programmatic NEPA reviews.

The document, "Effective Use of Programmatic NEPA Reviews," addresses how agencies should perform programmatic NEPA reviews, and replaces a draft guide released for public comment in August.

CEQ associate director for NEPA oversight Horst Greczmiel said in a statement then that the new guide would "clarify opportunities to conduct efficient and thorough environmental reviews; assist agency decisionmakers and the public in understanding the environmental impacts from proposed large-scope federal actions and activities; and encourage a more consistent approach to programmatic NEPA reviews."

The document was seen as intended to head off calls by Congress to make broad changes to NEPA and a host of other environmental laws by amending the Administrative Procedure Act, rather than the underlying statutes. CEQ said in its Dec. 18 statement that the final programmatic guide clarifies the different scenarios under which an agency may prepare a programmatic, broad-scale review. It notes the guide was requested by federal agencies undertaking broad, landscape-scale analyses for proposals affecting resources they manage. CEQ adds that the goal of the guidance, which incorporates input from the public comment period, is to "encourage a more consistent approach to programmatic NEPA reviews."

The document says agencies should conduct programmatic NEPA reviews for four major categories: adopting official policy; adopting formal plans; adopting agency programs; and approving multiple actions. – Dawn Reeves (dreeves@iwpnews.com)

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