

Issue	Draft Guidance	Final Guidance
<p>Application of the Guidance to ongoing NEPA reviews</p> <p>No significant change.</p> <p>CEQ does not require application to ongoing NEPA reviews but continues to express a preference for doing so.</p>	<p>“The revised draft guidance will be effective immediately once finalized for newly proposed actions”</p> <p>“Agencies are encouraged to apply this guidance to all new agency actions moving forward, and, to the extent practicable, to build its concepts into currently on-going reviews.” <i>Id.</i> at 77,831.</p>	<p>“Agencies should apply this guidance to all new proposed agency actions when a NEPA review is initiated.”</p> <p>“Agencies should exercise judgment when considering whether to apply this guidance to the extent practicable to an on-going NEPA process.”</p> <p>“Agencies should consider applying this guidance to projects in the EIS or EA preparation stage if this would inform the consideration of differences between alternatives or address comments raised through the public comment process with sufficient scientific basis that suggest the environmental analysis would be incomplete without application of the guidance”</p>
<p>Analysis of upstream and downstream emissions</p> <p>Some changes, but limited practical impact.</p> <p>While the direct GHG</p>	<p>CEQ references the “rule of reason” and concept of proportionality as guiding principles.</p> <p>CEQ references NEPA requirements to address direct, indirect, and cumulative impacts and the</p>	<p>CEQ references the “rule of reason” and concept of proportionality as guiding principles.</p> <p>CEQ references NEPA requirements to address direct, and indirect impacts and the need to include all</p>

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<p>emissions associated with a proposed federal action may be limited, the amount of GHG emissions can increase dramatically if the scope of the NEPA review is expanded to include GHG emissions associated with the lifecycle of the resource at issue (i.e., upstream and downstream emissions). NEPA places strict limits on the types of impacts that can be included in a NEPA analysis and requires that the federal action be a “proximate cause” of those impacts.</p> <p>In the Final Guidance, CEQ eliminates all references to “upstream” and “downstream” emissions from the draft but appears to retain similar concepts through the use of the conventional NEPA terms “direct” and “indirect” effects. CEQ also cites heavily to the existing NEPA regulations, suggesting that the guidance is consistent with existing NEPA regulations and case law. In short, it appears CEQ has retained the “lifecycle analysis” concept proposed in the draft guidance, but has altered the vocabulary to more closely track the</p>	<p>need to include all “reasonably foreseeable” effects.</p> <p>“In addition, emissions from activities that have a reasonably close causal relationship to the Federal action, such as those that may occur as a predicate for the agency action (often referred to as upstream emissions) and as a consequence of the agency action (often referred to as downstream emissions) should be accounted for in the NEPA analysis”</p> <p>“NEPA analysis for a proposed open pit mine could include the reasonably foreseeable effects of various components of the mining process, such as clearing land for the extraction, building access roads, transporting the extracted resource, refining or processing the resource, and using the resource.”</p>	<p>“reasonably foreseeable” effects. The Final Guidance states that a separate evaluation of cumulative impacts is not necessary.</p> <p>CEQ eliminates references to “upstream” or “downstream” emissions: “Activities that have a reasonably close causal relationship to the Federal action, such as those that may occur as a predicate for a proposed agency action or as a consequence of a proposed agency action, should be accounted for in the NEPA analysis.”</p> <p>“NEPA reviews for proposed resource extraction and development projects typically include the reasonably foreseeable effects of various phases in the process, such as clearing land for the project, building access roads, extraction, transport, refining, processing, using the resource, disassembly, disposal, and reclamation.”</p> <p>CEQ suggests in a footnote that a lifecycle analysis approach may be</p>

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<p>established NEPA lexicon.</p> <p>This interpretive gloss nonetheless arguably extends beyond the case law. Thus, while the language might conform more closely to existing NEPA regulations, the Final Guidance embraces an expansive approach in interpreting the scope of a NEPA review, particularly for federal actions that involved the extraction of fossil fuels.</p>		<p>appropriate for evaluating the extraction of fossil fuels: “Where the proposed action involves fossil fuel extraction, direct emissions typically include GHGs emitted during the process of exploring for or extracting the fossil fuel. The indirect effects of such an action that are reasonably foreseeable at the time would vary with the circumstances of the proposed action. For actions such as a Federal lease sale of coal for energy production, the impacts associated with the end-use of the fossil fuel being extracted would be the reasonably foreseeable combustion of that coal.”</p>
<p>Application of the Guidance to land and resource management actions</p> <p>No change.</p> <p>CEQ’s initial draft guidance excluded land and resource management actions. CEQ reversed course and included them in the revised draft guidance. The Final Guidance made no changes with respect to</p>	<p>CEQ specified that the draft guidance applies to all agency actions, including land and resource management actions.</p> <p>CEQ includes a specific section to address biogenic CO2 emissions from land and resource management actions.</p> <p>CEQ includes a section addressing incorporation by reference and reliance on programmatic EISs to</p>	<p>CEQ specified that the draft guidance applies to all agency actions, including land and resource management actions.</p> <p>CEQ includes a specific section to address biogenic CO2 emissions from land and resource management actions.</p> <p>CEQ includes a section addressing incorporation by reference and reliance on programmatic EISs to</p>

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land and resource management actions from the guidance.	inform NEPA analyses for subsequent site-specific actions.	inform NEPA analyses for subsequent site-specific actions.
<p>Use of the Social Cost of Carbon</p> <p>Modest change.</p> <p>The Social Cost of Carbon (SCC) is a model developed by federal agencies that attempts to monetize the global benefits associated with reducing GHG emissions and has been used frequently in regulatory cost-benefit analyses. Critics have identified significant flaws with the SCC model, have questioned its utility in evaluating the costs and benefits of federal actions, and have critiqued the lack of transparency and public participation in establishing the SCC.</p> <p>CEQ seems to have de-emphasized the importance of monetizing costs and benefits in NEPA analyses and only referenced the social cost of carbon in a footnote. Yet, the Final Guidance appears to continue to</p>	<p>“Monetizing costs and benefits is appropriate in some, but not all, cases and is not a new requirement.”</p> <p>“When an agency determines it appropriate to monetize costs and benefits, then, although developed specifically for regulatory impact analyses, the Federal social cost of carbon, which multiple Federal agencies have developed and used to assess the costs and benefits of alternatives in rulemakings, offers a harmonized, interagency metric that can provide decisionmakers and the public with some context for meaningful NEPA review.”</p>	<p>“NEPA does not require monetizing costs and benefits. Furthermore, the weighing of the merits and drawbacks of the various alternatives need not be displayed using a monetary cost-benefit analysis and should not be when there are important qualitative considerations.”</p> <p>In footnote: “For example, the Federal social cost of carbon (SCC) estimates the marginal damages associated with an increase in carbon dioxide emissions in a given year. Developed through an interagency process committed to ensuring that the SCC estimates reflect the best available science and methodologies and used to assess the social benefits of reducing carbon dioxide emissions across alternatives in rulemakings, it provides a harmonized, interagency metric that can give decision makers and the public useful information for their NEPA review.”</p> <p>“[I]f an agency chooses to</p>

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<p>allow the SCC as a consideration for NEPA analyses where agencies engage in cost benefit analysis.</p>		<p>monetize some but not all impacts of an action, the agency providing this additional information should explain its rationale for doing so.”</p>
<p>Inclusion of mitigation measures under NEPA</p> <p>No change.</p> <p>While evaluation of potential mitigation measures is an important part of a NEPA analysis, NEPA’s requirements are procedural in nature. Thus, there is no substantive requirement under NEPA for federal agencies to affirmatively adopt mitigation measures as part of their NEPA review.</p> <p>While CEQ made some minor changes regarding the phrasing of the mitigation guidance, the ambiguity identified by commenters on the Draft Guidance still persists regarding whether CEQ is suggesting that under NEPA federal agencies should take affirmative action to mitigate GHG emissions. Requiring mitigation as part of an EIS</p>	<p>“As Federal agencies evaluate proposed mitigation of GHG emissions or of interactions involving the affected environment, the quality of that mitigation—including its permanence, verifiability, enforceability, and additionality should be carefully evaluated.”</p> <p>“[T]he CEQ Regulations recognize the value of monitoring to ensure that mitigation is carried out as provided in a Finding of No Significant Impact or Record of Decision. In cases where mitigation measures are designed to address the effects of climate change, the agency’s final decision should identify those mitigation measures and the agency should consider adopting an appropriate monitoring program.”</p>	<p>“As Federal agencies evaluate potential mitigation of GHG emissions and the interaction of a proposed action with climate change, the agencies should also carefully evaluate the quality of that mitigation to ensure it is additional, verifiable, durable, enforceable, and will be implemented.”</p> <p>“[T]he CEQ Regulations and guidance recognize the value of monitoring to ensure that mitigation is carried out as provided in a record of decision or finding of no significant impact. The agency’s final decision on the proposed action should identify those mitigation measures that the agency commits to take, recommends, or requires others to take. Monitoring is particularly appropriate to confirm the effectiveness of mitigation when that mitigation is adopted to reduce the impacts of a proposed action on affected resources already increasingly vulnerable due</p>

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<p>and Record of Decision would be inconsistent with well-established Supreme Court case law.</p>		<p>to climate change.”</p>
<p>Adoption of an emissions threshold for quantifying GHG emissions</p> <p>Significant change.</p> <p>CEQ eliminated any reference to a 25,000 ton-per-year threshold for quantifying GHG emissions. Instead, it leaves questions about the significance of GHG emissions and the need to quantify them to the discretion of the federal agencies.</p>	<p>“In considering when to disclose projected quantitative GHG emissions, CEQ is providing a reference point of 25,000 metric tons of CO₂-e emissions on an annual basis below which a GHG emissions quantitative analysis is not warranted unless quantification below that reference point is easily accomplished.”</p>	<p>“This guidance does not establish any particular quantity of GHG emissions as “significantly” affecting the quality of the human environment or give greater consideration to the effects of GHG emissions and climate change over other effects on the human environment.”</p>
<p>Resilience and Adaptation</p> <p>It is notable that the Final Guidance places greater emphasis on analysis of climate change resilience and adaptation for projects over the reasonable lifetime of the projects in NEPA reviews than the Draft Guidance.</p>		<p>“Climate change effects on the environment and on the proposed project should be considered in 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. In such cases, a NEPA review will provide relevant information that agencies can use to consider in the initial project design, as well as</p>

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		<p>alternatives with preferable overall environmental outcomes and improved resilience to climate impacts.”</p> <p>“For example, an agency considering a proposed long-term development of transportation infrastructure on a coastal barrier island should take into account climate change effects on the environment and, as applicable, consequences of rebuilding where sea level rise and more intense storms will shorten the projected life of the project and change its effects on the environment.”</p> <p>“In addition, the particular impacts of climate change on vulnerable communities may be considered in the design of the action or the selection among alternatives to assess the impact, and potential for disproportionate impacts, on those communities.”</p> <p>“For example, chemical facilities located near the coastline could have increased risk of spills or leakages due to sea level</p>

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		rise or increased storm surges, putting local communities and environmental resources at greater risk. Increased resilience could minimize such potential future effects.”

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