



February 18, 2010

MEMORANDUM FOR HEADS OF FEDERAL DEPARTMENTS AND AGENCIES

FROM: NANCY H. SUTLEY, Chair, Council on Environmental Quality

SUBJECT: DRAFT NEPA GUIDANCE ON CONSIDERATION OF THE EFFECTS OF CLIMATE CHANGE AND GREENHOUSE GAS EMISSIONS

I. INTRODUCTION

The Council on Environmental Quality (CEQ) provides this draft guidance memorandum for public consideration and comment on the ways in which Federal agencies can improve their consideration of the effects of greenhouse gas (GHG) emissions<sup>1</sup> and climate change in their evaluation of proposals for Federal actions under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 et seq. This draft guidance is intended to help explain how agencies of the Federal government should analyze the environmental effects of GHG emissions and climate change when they describe the environmental effects of a proposed agency action in accordance with Section 102 of NEPA and the CEQ Regulations for Implementing the Procedural Provisions of NEPA, 40 C.F.R. parts 1500-1508. This draft guidance affirms the requirements of the statute and regulations and their applicability to GHGs and climate change impacts. CEQ proposes to advise Federal agencies that they should consider opportunities to reduce GHG emissions caused by proposed Federal actions and adapt their actions to climate change impacts throughout the NEPA process and to address these issues in their agency NEPA procedures.

The environmental analysis and documents produced in the NEPA process should provide the decision maker with relevant and timely information about the environmental effects of his or her decision and reasonable alternatives to mitigate those impacts. In this context, climate change issues arise in relation to the consideration of:

- (1) The GHG emissions effects of a proposed action and alternative actions; and
- (2) The relationship of climate change effects to a proposed action or alternatives, including the relationship to proposal design, environmental impacts, mitigation and adaptation measures.

NEPA demands informed, realistic governmental decision making. CEQ proposes to advise Federal agencies to consider, in scoping their NEPA analyses, whether analysis of the direct and indirect GHG emissions from their proposed actions may provide meaningful information to decision makers and the public. Specifically, if a proposed action would be reasonably anticipated to cause direct emissions of 25,000 metric tons or more of CO<sub>2</sub>-equivalent GHG emissions on an annual basis, agencies should consider this an indicator that a quantitative and qualitative assessment may be meaningful to decision makers and the public. For long-term actions that have annual direct emissions of less than 25,000

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<sup>1</sup> For purposes of this guidance, CEQ defines "GHGs" in accordance with Section 19(i) of Executive Order 13514 (carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride).

metric tons of CO<sub>2</sub>-equivalent, CEQ encourages Federal agencies to consider whether the action's long-term emissions should receive similar analysis. CEQ does not propose this as an indicator of a threshold of significant effects, but rather as an indicator of a minimum level of GHG emissions that may warrant some description in the appropriate NEPA analysis for agency actions involving direct emissions of GHGs.

CEQ does not propose to make this guidance applicable to Federal land and resource management actions, but seeks public comment on the appropriate means of assessing the GHG emissions and sequestration that are affected by Federal land and resource management decisions.

Because climate change is a global problem that results from global GHG emissions, there are more sources and actions emitting GHGs (in terms of both absolute numbers and types) than are typically encountered when evaluating the emissions of other pollutants. From a quantitative perspective, there are no dominating sources and fewer sources that would even be close to dominating total GHG emissions. The global climate change problem is much more the result of numerous and varied sources, each of which might seem to make a relatively small addition to global atmospheric GHG concentrations. CEQ proposes to recommend that environmental documents reflect this global context and be realistic in focusing on ensuring that useful information is provided to decision makers for those actions that the agency finds are a significant source of GHGs.

With regards to the effects of climate change on the design of a proposed action and alternatives, Federal agencies must ensure the scientific and professional integrity of their assessment of the ways in which climate change is affecting or could affect environmental effects of the proposed action. 40 CFR 1502.24. Under this proposed guidance, agencies should use the scoping process to set reasonable spatial and temporal boundaries for this assessment and focus on aspects of climate change that may lead to changes in the impacts, sustainability, vulnerability and design of the proposed action and alternative courses of action. At the same time, agencies should recognize the scientific limits of their ability to accurately predict climate change effects, especially of a short-term nature, and not devote effort to analyzing wholly speculative effects. Agencies can use the NEPA process to reduce vulnerability to climate change impacts, adapt to changes in our environment, and mitigate the impacts of Federal agency actions that are exacerbated by climate change.

Finally, CEQ seeks public comment on several issues not directly addressed by this draft guidance, including the assessment of climate change effects of land management activities, and means by which agencies can tailor the amount of the documentation prepared for NEPA analysis so that it is proportional to the importance of climate change to the decision-making process.

## II. CONSIDERATION OF THE EFFECTS OF A PROPOSED AGENCY ACTION ON GHG EMISSIONS: WHEN TO EVALUATE GHG EMISSIONS

By statutes, Executive Orders, and agency policies, the Federal government is committed to the goals of energy conservation, reducing energy use, eliminating or reducing GHG emissions, and promoting the deployment of renewable energy technologies that are cleaner and more efficient. Where a proposal for Federal agency action implicates these goals, information on GHG emissions (qualitative or quantitative) that is useful and relevant to the decision should be used when deciding among alternatives.

Many projects and programs proposed by the Federal government have the potential to emit GHGs. Accordingly, where a proposed Federal action that is analyzed in an EA or EIS would be anticipated to emit GHGs to the atmosphere in quantities that the agency finds may be meaningful, it is appropriate for the agency to quantify and disclose its estimate of the expected annual direct and indirect GHG emissions in the environmental documentation for the proposed action. Where the proposed

activity is subject to GHG emissions accounting requirements, such as Clean Air Act reporting requirements that apply to stationary sources that directly emit 25,000 metric tons or more of CO<sub>2</sub>-equivalent GHG on an annual basis,<sup>2</sup> the agency should include this information in the NEPA documentation for consideration by decision makers and the public. CEQ does not propose this reference point for use as a measure of indirect effects, the analysis of which must be bounded by limits of feasibility in evaluating upstream and downstream effects of Federal agency actions. In the agency's analysis of direct effects, it would be appropriate to: (1) quantify cumulative emissions over the life of the project; (2) discuss measures to reduce GHG emissions, including consideration of reasonable alternatives; and (3) qualitatively discuss the link between such GHG emissions and climate change. However, it is not currently useful for the NEPA analysis to attempt to link specific climatological changes, or the environmental impacts thereof, to the particular project or emissions, as such direct linkage is difficult to isolate and to understand. The estimated level of GHG emissions can serve as a reasonable proxy for assessing potential climate change impacts, and provide decision makers and the public with useful information for a reasoned choice among alternatives.

The reference point of 25,000 metric tons of direct CO<sub>2</sub>-equivalent GHG emissions may provide agencies with a useful indicator – rather than an absolute standard of insignificant effects -- for agencies' action-specific evaluation of GHG emissions and disclosure of that analysis in their NEPA documents. CEQ does not propose this reference point as an indicator of a level of GHG emissions that may significantly affect the quality of the human environment, as that term is used by NEPA, but notes that it serves as a minimum standard for reporting emissions under the Clean Air Act. Evaluation of significance under NEPA is done by the action agency based on the categorization of actions in agency NEPA procedures and action-specific analysis of the context and intensity of the environmental impacts. 40 CFR 1501.4, 1508.27. Examples of proposals for Federal agency action that may warrant a discussion of the GHG impacts of various alternatives, as well as possible measures to mitigate climate change impacts, include: approval of a large solid waste landfill; approval of energy facilities such as a coal-fired power plant; or authorization of a methane venting coal mine. Other Federal policies, programs, or plans that cover multiple actions subject to NEPA – such as actions tiered from programmatic NEPA documents – may more appropriately address GHG emissions at the level of individual projects. In many cases, the GHG emissions of the proposed action may be so small as to be a negligible consideration. Agency NEPA procedures may identify actions for which GHG emissions and other environmental effects are neither individually or cumulatively significant. 40 CFR 1507.3.

Many agency NEPA analyses to date have found that GHG emissions from an individual agency action have small potential effects. Emissions from many proposed Federal actions would not typically be expected to produce an environmental effect that would trigger or otherwise require a detailed discussion in an EIS. Significant national policy decisions for which the action's GHG impacts are expected to be substantial have, on the other hand, required analysis of their GHG effects.

## **HOW TO EVALUATE GHG EMISSIONS**

To describe the impact of an agency action on GHG emissions, once an agency has determined that this is appropriate, CEQ proposes that agencies should consider quantifying those emissions using the

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<sup>2</sup> 25,000 metric tons may provide a useful, presumptive, threshold for discussion and disclosure of GHG emissions because it has been used and proposed in rule-makings under the Clean Air Act (e.g., EPA's Mandatory Reporting of Greenhouse Gases Final Rule, 74 FR 56260, October 30, 2009). This threshold is used in Clean Air Act rule-makings because it provides comprehensive coverage of emissions with a reasonable number of reporters, thereby creating an important data set useful in quantitative analyses of GHG policies, programs and regulations. See 74 FR 56272. This rationale is pertinent to the presentation of NEPA analysis as well.

following technical documents, to the extent that this information is useful and appropriate for the proposed action under NEPA:

- For quantification of emissions from large direct emitters: 40 CFR Parts 86, 87, 89, et al. Mandatory Reporting of Greenhouse Gases; Final Rule, U.S. Environmental Protection Agency (74 Fed. Reg. 56259-56308). Note that “applicability tools” are available (<http://www.epa.gov/climatechange/emissions/GHG-calculator/>) for determining whether projects or actions exceed the 25,000 metric ton of CO<sub>2</sub>-equivalent greenhouse gas emissions.
- For quantification of Scope 1 emissions at Federal facilities: Greenhouse gas emissions accounting and reporting guidance that will be issued under Executive Order 13514 Sections 5(a) and 9(b) (<http://www.ofee.gov>)
- For quantification of emissions and removals from terrestrial carbon sequestration and various other project types: Technical Guidelines, Voluntary Reporting of Greenhouse Gases, (1605(b) Program, U.S. Department of Energy (<http://www.eia.doe.gov/oiaf/1605/>))

Land management techniques, including changes in land use or land management strategies, lack any established Federal protocol for assessing their effect on atmospheric carbon release and sequestration at a landscape scale. Therefore, at this time, CEQ seeks public comment on this issue but has not identified any protocol that is useful and appropriate for NEPA analysis of a proposed land and resource management actions.

CEQ notes that agencies may also find useful information in the following sources:

- Renewable Energy Requirements Guidance for EPACT 2005 and EO 13423 ([http://www.ofee.gov/eo/epact05\\_fedrenewenergyguid\\_final\\_on\\_web.pdf](http://www.ofee.gov/eo/epact05_fedrenewenergyguid_final_on_web.pdf))
- EPA Climate Leaders GHG Inventory Protocols (<http://www.epa.gov/climateleaders/resources/inventory-guidance.html>)

For proposed actions that are not adequately addressed in the GHG emission reporting protocols listed above, agencies should use NEPA’s provisions for inter-agency consultation with available expertise to identify and follow the best available procedures for evaluating comparable activities. Agencies should consider the emissions source categories, measurement methodologies and reporting criteria outlined in these documents, as applicable to the proposed action, and follow the relevant procedures for determining and reporting emissions. The NEPA process does not require submitting a formal report or participation in the reporting programs. Rather, under this proposed guidance, only the methodologies relevant to the emissions of the proposed project need to be considered and disclosed to decision makers and the public.

## **WHAT DEPARTMENTS AND AGENCIES SHOULD CONSIDER AS PART OF THEIR GHG EVALUATION**

Federal agencies should structure their NEPA processes “to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.” 40 CFR 1502.1. Inherent in NEPA and the CEQ implementing regulations is a “rule of reason,” which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decisionmaking process.” *DOT v. Public Citizen*, 541 U.S. 752, 767 (2004). Where a proposed action is evaluated in either an EA or an EIS, the agency may look to reporting thresholds in the technical documents cited above as a point of reference for

determining the extent of direct GHG emissions analysis that is appropriate to the proposed agency decision. As proposed in draft guidance above, for Federal actions that require an EA or EIS the direct and indirect GHG emissions from the action should be considered in scoping and, to the extent that scoping indicates that GHG emissions warrant consideration by the decision maker, quantified and disclosed in the environmental document. 40 CFR 1508.25. In assessing direct emissions, an agency should look at the consequences of actions over which it has control or authority. *Public Citizen*, 541 U.S. at 768. When a proposed federal action meets an applicable threshold for quantification and reporting, as discussed above, CEQ proposes that the agency should also consider mitigation measures and reasonable alternatives to reduce action-related GHG emissions. Analysis of emissions sources should take account of all phases and elements of the proposed action over its expected life, subject to reasonable limits based on feasibility and practicality.

For proposed actions evaluated in an EIS, Federal agencies typically describe their consideration of the energy requirements of a proposed action and the conservation potential of its alternatives. 40 CFR 1502.16(e). Within this description of energy requirements and conservation opportunities, agencies should evaluate GHG emissions associated with energy use and mitigation opportunities and use this as a point of comparison between reasonable alternatives. For proposals normally evaluated in an EA, agencies may consider the GHG emissions as a factor in discussing alternative uses of available resources. 40 CFR 1508.9(b). CEQ proposes that this analysis should also consider applicable Federal, State or local goals for energy conservation and alternatives for reducing energy demand or GHG emissions associated with energy production.

Where an agency concludes that a discussion of cumulative effects of GHG emissions related to a proposed action is warranted to inform decision-making, CEQ recommends that the agency do so in a manner that meaningfully informs decision makers and the public regarding the potentially significant effects in the context of the proposal for agency action. This would most appropriately focus on an assessment of annual and cumulative emissions of the proposed action and the difference in emissions associated with alternative actions. Agencies may incorporate USGCRP studies and reports by reference in any discussion of GHG emissions and their effects. 40 CFR 1502.21.

Agencies apply the rule of reason to ensure that their discussion pertains to the issues that deserve study and deemphasizes issues that are less useful to the decision regarding the proposal, its alternatives, and mitigation options. 40 CFR 1500.4(f), (g), 1501.7, 1508.25. In addressing GHG emissions, consistent with this proposed guidance, CEQ expects agencies to ensure that such description is commensurate with the importance of the GHG emissions of the proposed action, avoiding useless bulk and boilerplate documentation, so that the NEPA document may concentrate attention on important issues. 40 CFR 1502.5, 1502.24.

An agency may decide that it would be useful to describe GHG emissions in aggregate, as part of a programmatic analysis of agency activities that can be incorporated by reference into subsequent NEPA analyses for individual agency actions. In addition, Federal programs that affect emissions or sinks and proposals regarding long range energy, transportation, and resource management programs lend themselves to a programmatic approach. For example, if GHG emissions or climate change and related effects in general are included in a broad (i.e., programmatic) EIS for a program, subsequent NEPA analyses for actions implementing that program at the project level should, if useful in the NEPA analysis for that decision, tier from the programmatic statement and summarize the relevant issues discussed in the programmatic statement. 40 CFR 1502.20, 1508.28. Such aggregated discussion may be useful under the consideration of agency compliance with requirements for Federal agencies to implement sustainable practices for energy efficiency, GHG emissions avoidance or reduction, petroleum products use reduction, and renewable energy, including bioenergy as well as other required sustainable practices. See, Executive Order 13514 – Federal Leadership in Environmental, Energy, and Economic Performance (74

Fed. Reg. 52117-52127); Executive Order 13423 - Strengthening Federal Environmental, Energy, and Transportation Management ([http://nepa.gov/nepa/regs/E.O. 13423.pdf](http://nepa.gov/nepa/regs/E.O._13423.pdf)). In particular, NEPA analyses for individual actions may incorporate by reference agency Strategic Sustainability Plans and account for GHG effects in accordance with Federal GHG reporting and accounting procedures to the extent that they are applicable to actions that carry out agency obligations under subsections 2(a), (b), (c) and (f) of Executive Order 13514. Such reference to the programmatic accounting of Federal agency GHG emissions under EO 13514 should note where appropriate that the scope of this accounting (for Scope 1, 2 and 3 emissions) may be much broader than the emissions that would be reasonable for assessment within the scope of an individual agency action under NEPA.

To the extent that a federal agency evaluates proposed mitigation of GHG emissions, the quality of that mitigation – including its permanence, verifiability, enforceability, and additionality<sup>3</sup> – should also be carefully evaluated. Among the alternatives that may be considered for their ability to reduce or mitigate GHG emissions are enhanced energy efficiency, lower GHG-emitting technology, renewable energy, planning for carbon capture and sequestration, and capturing or beneficially using fugitive methane emissions. In some cases, such activities are part of the purpose and need for the proposed action and the analysis will provide an assessment, in a comparative manner, of the alternatives and their relative ability to advance those objectives.

### III. CONSIDERATION OF CURRENT OR PROJECTED EFFECTS OF CLIMATE CHANGE ON PROPOSALS FOR AGENCY ACTION

CEQ proposes that agencies should determine which climate change impacts warrant consideration in their EAs and EISs because of their impact on the analysis of the environmental effects of a proposed agency action. Through scoping of an environmental document, agencies determine whether climate change considerations warrant emphasis or de-emphasis. 40 CFR 1500.4(g), 1501.7; See Scoping Guidance (CEQ 1981) (<http://www.nepa.gov/nepa/regs/scope/scoping.htm>) When scoping the impact of climate change on the proposal for agency action, the sensitivity, location, and timeframe of a proposed action will determine the degree to which consideration of these predictions or projections is warranted. As with analysis of any other present or future environment or resource condition, the observed and projected effects of climate change that warrant consideration are most appropriately described as part of the current and future state of the proposed action's "affected environment." 40 CFR 1502.15. Based on that description of climate change effects that warrant consideration, the agency may assess the extent that the effects of the proposal for agency action or its alternatives will add to, modify, or mitigate those effects. Such effects may include, but are not limited to, effects on the environment, on public health and safety, and on vulnerable populations who are more likely to be adversely affected by climate change. The final analysis documents an agency assessment of the effects of the actions considered, including alternatives, on the affected environment.

Climate change can affect the environment of a proposed action in a variety of ways. For instance, climate change can affect the integrity of a development or structure by exposing it to a greater risk of floods, storm surges, or higher temperatures. Climate change can increase the vulnerability of a resource, ecosystem, or human community, causing a proposed action to result in consequences that are more damaging than prior experience with environmental impacts analysis might indicate. For example, an industrial process may draw cumulatively significant amounts of water from a stream that is dwindling because of decreased snow pack in the mountains or add significant heat to a water body that is exposed

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<sup>3</sup> Regulatory additionality requirements are designed to ensure that GHG reduction credit is limited to an entity with emission reductions that are above regulatory requirements. See [http://www.eia.doe.gov/oiaf/1605/FAQ\\_GenInfoA.htm#Additionality](http://www.eia.doe.gov/oiaf/1605/FAQ_GenInfoA.htm#Additionality);

to increasing atmospheric temperatures. Finally, climate change can magnify the damaging strength of certain effects of a proposed action.

Using NEPA's "rule of reason" governing the level of detail in any environmental effects analysis, agencies should ensure that they keep in proportion the extent to which they document their assessment of the effects of climate change. The focus of this analysis should be on the aspects of the environment that are affected by the proposed action and the significance of climate change for those aspects of the affected environment. Agencies should consider the specific effects of the proposed action (including the proposed action's effect on the vulnerability of affected ecosystems), the nexus of those effects with projected climate change effects on the same aspects of our environment, and the implications for the environment to adapt to the projected effects of climate change. The level of detail in the analysis and NEPA documentation of these effects will vary among affected resource values. For example, if a proposed project requires the use of significant quantities of water, changes in water availability associated with climate change may need to be discussed in greater detail than other consequences of climate change. In some cases, discussion of climate change effects in an EA or EIS may warrant a separate section, while in others such discussion may be integrated into the broader discussion of the affected environment.

When assessing the effects of climate change on a proposed action, an agency typically start with an identification of the reasonably foreseeable future condition of the affected environment for the "no action" alternative based on available climate change measurements, statistics, observations, and other evidence. See *Considering Cumulative Effects* (CEQ 1997) at [www.nepa.gov](http://www.nepa.gov). The reasonably foreseeable affected environment should serve as the basis for evaluating and comparing the incremental effects of alternatives. 40 CFR 1502.15. Agencies should be clear about the basis for projecting the changes from the existing environment to the reasonably foreseeable affected environment, including what would happen under this scenario and the probability or likelihood of this future condition. The obligation of an agency to discuss particular effects turns on "a reasonably close causal relationship between the environmental effect and the alleged cause." *Public Citizen*, 541 U.S. at 767. Where climate change effects are likely to be important but there is significant uncertainty about such effects, it may also be useful to consider the effects of any proposed action or its alternatives against a baseline of reasonably foreseeable future conditions that is drawn as distinctly as the science of climate change effects will support.

Climate change effects should be considered in the analysis of projects that are designed for long-term utility and located in areas that are considered vulnerable to specific effects of climate change (such as increasing sea level or ecological change) within the project's timeframe. For example, a proposal for long-term development of transportation infrastructure on a coastal barrier island will likely need to consider whether environmental effects or design parameters may be changed by the projected increase in the rate of sea level rise. See *Impacts of Climate Change and Variability on Transportation Systems and Infrastructure: Gulf Coast Study*, (<http://www.globalchange.gov/publications/reports/scientific-assessments/saps/sap4-7>), and *Abrupt Climate Change* (<http://www.globalchange.gov/publications/reports/scientific-assessments/saps/sap3-4> (discussing the likelihood of an abrupt change in sea level). Given the length of time involved in present sea level projections, such considerations typically would not be relevant to an action with only short-term considerations.

The process of adaptive planning requires constant learning to reduce uncertainties and improve adaptation outcomes. The CEQ NEPA regulations recognize the value of monitoring to assure that decisions are carried out as provided in a Record of Decision. 40 CFR 1505.3. In cases where adaptation to the effects of climate change is important, the significant aspects of these changes should be identified in the agency's final decision and adoption of a monitoring program should be considered. Monitoring

strategies should be modified as more information becomes available and best practices and other experiences are shared.

For sources of the best scientific information available on the reasonably foreseeable climate change impacts, Federal agencies may summarize and incorporate by reference the Synthesis and Assessment Products of the U.S. Global Change Research Program (USGCRP, <http://www.globalchange.gov/publications/reports/scientific-assessments/saps>), and other major peer-reviewed assessments from USGCRP. Particularly relevant is the report on climate change impacts on water resources, ecosystems, agriculture and forestry, health, coastlines and arctic regions in the United States. *Global Climate Change Impacts in the United States* (<http://www.globalchange.gov/publications/reports/scientific-assessments/us-impacts>). Research on climate change impacts is an emerging and rapidly evolving area of science. In accordance with NEPA's rule of reason and standards for obtaining information regarding reasonably foreseeable significant adverse effects on the human environment, action agencies need not undertake exorbitant research or analysis of projected climate change impacts in the project area or on the project itself, but may instead summarize and incorporate by reference the relevant scientific literature. See, e.g., 40 CFR 1502.21, 1502.22. Where agencies consider climate change modeling to be applicable to their NEPA analysis, agencies should consider the uncertainties associated with long-term projections from global and regional climate change models. There are limitations and variability in the capacity of climate models to reliably project potential changes at the regional, local, or project level, so agencies should disclose these limitations in explaining the extent to which they rely on particular studies or projections. 40 CFR 1502.21, 1502.22. The outputs of coarse-resolution global climate models, commonly used to project climate change scenarios at a continental or regional scale, require downscaling and bias removal (i.e., the adjustment of future projections for known systematic model errors) before they can be used in regional or local impact studies. See *Climate Models: An Assessment of Strengths and Limitations*. (<http://www.globalchange.gov/publications/reports/scientific-assessments/saps/sap3-1>).

Agencies should also consider the particular impacts of climate change on vulnerable communities where this may affect the design of the action or the selection among alternatives. Tribal and Alaska Native communities that maintain their close relationship with the cycles of nature have observed the changes that are already underway, including the melting of permafrost in Alaska, disappearance of important species of trees, shifting migration patterns of elk and fish, and the drying of lakes and rivers. These effects affect the survival for both their livelihood and their culture. Further, sovereign tribal governments with legal rights to reservations and trust resources are affected by ecological changes on the landscape in ways that many Americans are not.

#### IV. BACKGROUND

##### 1. NEPA and Cumulative Effects in General

NEPA was enacted to, *inter alia*, “promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man.” NEPA Section 2, 42 U.S.C. § 4321. NEPA is best known for its action-forcing requirement that “all agencies of the federal government shall . . . include in every recommendation or report on . . . major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on –

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and



- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.”

NEPA Section 102(2) (C), 42 U.S.C. § 4332(2) (C). This information must be provided for review by agencies with jurisdiction or special expertise regarding the environmental effects described. The agency’s “detailed statement,” known as an EIS, must be provided to the public, in accordance with NEPA Section 102(2)(C) and the Freedom of Information Act, and be incorporated into the agency decision-making process.

The EIS requirement thus has two purposes. First, it is meant to promote transparency and to ensure public accountability of agency decisions with significant environmental effects. In this sense, it promotes political checks and balances broader public interests against the motivations for agency action. Second, it is meant to ensure that agencies take account of those effects before decisions are made and as part of the agency’s own decision-making process. In this sense, it attempts to ensure that agencies consider environmental consequences as they decide how to proceed and take steps, when appropriate, to eliminate or mitigate adverse effects. The agency’s “responsibility is not simply to sit back, like an umpire, and resolve adversary contentions . . . Rather, it must itself take the initiative of considering environmental values at every distinctive and comprehensive stage of the process beyond the staff’s evaluation and recommendation.” *Calvert Cliffs Coordinating Comm., Inc. v. US Atomic Energy Comm’n*, 449 F.2d 1109, 1119 (D.C. Cir. 1971).

Alternatives analysis is an essential element of the NEPA process, both under section 102(2) (C) and in the EA of “conflicts concerning alternative uses of available resources” under Section 102(2) (E). The requirement of consideration of alternatives is meant to ensure that the agency consider approaches whose adverse environmental effects will be insignificant or at least less significant than those of the proposal. “This requirement, like the ‘detailed statement’ requirement, seeks to ensure that each agency decision maker has before him and takes into proper account all possible approaches to a particular project (including total abandonment of the project) which would alter the environmental impact and the cost-benefit balance. Only in that fashion is it likely that the most intelligent, optimally beneficial decision will ultimately be made.” *Calvert Cliffs*, 449 F.2d at 1114.

NEPA analysis and documentation should be designed to both inform Federal agency decisions and provide for collaborative, coordinated decisions by making “advice and information useful in restoring, maintaining, and enhancing the quality of the environment” available to States, Tribes, counties, cities, institutions and individuals. Section 102(2) (G), 42 U.S.C. § 4332(2) (G). NEPA also requires Federal agencies to support international cooperation by recognizing “the global character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind’s world environment.” Section 102(2) (F), 42 U.S.C. § 4332(2) (F).

Federal actions may cause effects on the human environment that are not significant environment effects, in isolation, but that are significant in the aggregate or that will lead to significant effects. Since 1970, CEQ has construed the term “major Federal actions significantly affecting the quality of the human environment” as requiring the consideration of the “overall, cumulative impact of the action proposed (and of further actions contemplated).” 35 Fed. Reg. 7390, 7391 (1970). “Cumulative impact” is defined in CEQ’s NEPA regulations as the “impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions . . .” 40 C.F.R. § 1508.7. Cf. *Kleppe v. Sierra Club*, 427 U.S. 390, 413-414 (1976). CEQ interprets this regulation as referring only to the cumulative impact of the direct and indirect effects of the proposed action or its alternatives when added to the aggregate effects of past, present, and reasonably foreseeable future

actions. See, CEQ Guidance on the Consideration of Past Actions in Cumulative Effects Analysis (June 24, 2005) at 2, 3 ([www.nepa.gov/nepa/regs/Guidance\\_on\\_CE.pdf](http://www.nepa.gov/nepa/regs/Guidance_on_CE.pdf)).

As explained in prior CEQ guidance, and described in its handbook *Considering Cumulative Effects*, the analysis of cumulative effects begins with consideration of the direct and indirect effects on the environment that are expected or likely to result from a proposal for agency action or its reasonable alternatives. See *Considering Cumulative Effects* (CEQ 1997) at [www.nepa.gov](http://www.nepa.gov). Agencies then should consider the affected environment by looking for effects of past, present, and reasonably foreseeable future actions that are, in the judgment of the agency, relevant because their effects would increase or change in combination with the direct and indirect effects of the proposal for agency action or its alternatives. The relevant cumulative effects typically result from human activities with effects that accumulate within the temporal and geographic boundaries of the effects of the proposed action.

The purpose of cumulative effects analysis is to document agency consideration of the context and intensity of the effects of a proposal for agency action, particularly whether the action is related to other actions with individually insignificant but cumulatively significant impacts. 40 CFR 1508.27(b) (7). After such documentation, the dual purposes of NEPA will be satisfied. The public can scrutinize the relevant effects, and the agency, having been made alert to them, can decide how to proceed. The Supreme Court has emphasized that agencies may properly limit the scope of their cumulative effects analysis based on practical considerations. *Kleppe*, 427 U.S. at 414 (“Even if environmental interrelationships could be shown conclusively to extend across basins and drainage areas, practical considerations of feasibility might well necessitate restricting the scope of comprehensive statements”). See also 40 CFR 1502.22 (regarding acquisition and disclosure of information that is “relevant to reasonably foreseeable significant adverse impacts” and “essential to a reasoned choice among alternatives”).

## 2. Climate Change in General.

The science of climate change is rapidly developing, and is only briefly summarized in this guidance to illustrate the sources of scientific information that are presently available for consideration. CEQ’s first Annual Report in 1970 discussed climate change, concluding that “man may be changing his weather.” Environmental Quality: The First Annual Report at 93. At that time, human activities had increased the mean level of atmospheric carbon dioxide to 325 parts per million (ppm). Since 1970, the concentration of atmospheric carbon dioxide has increased at a rate of about 1.6 ppm per year (1979-2008) to the present level of approximately 385 ppm (2008 globally averaged value). See U.S. Department of Commerce, National Oceanic and Atmospheric Administration Earth Systems Research Laboratory (<http://www.esrl.noaa.gov/gmd/ccgg/trends/>). The atmospheric concentrations of other, more potent GHGs have also increased to levels that far exceed their levels in 1750, at the beginning of the industrial era. As of 2004, human activities annually produced more than 49 billion tons of GHG measured in carbon dioxide equivalency according to the [Intergovernmental Panel on Climate Change \(IPCC\)](#). IPCC Fourth Assessment Report: Synthesis Report at 38 ([http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4\\_syr.pdf](http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr.pdf)). Nearly every aspect of energy choices and use affect the development of fossil fuel and other energy resources, either adding to or reducing the cumulative total of GHG emissions.

It is now well established that rising global GHG emissions are significantly affecting the Earth’s climate. These conclusions are built upon a scientific record that has been created with substantial contributions from the United States’ Global Change Research Program (formerly the Climate Change Science Program), which facilitates the creation and application of knowledge of the Earth’s global environment through research, observations, decision support, and communication. (<http://www.globalchange.gov/>)

Based primarily on the scientific assessments of the USGCRP and NRC, EPA has issued a finding that the changes in our climate caused by GHG emissions endanger public health and welfare. (Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, December 15, 2009, 74 Fed. Reg. 66496). Ambient concentrations of GHGs do not cause direct adverse health effects (such as respiratory or toxic effects), but public health risks and impacts as a result of elevated atmospheric concentrations of GHGs occur via climate change. 74 Fed. Reg. at 66497-98. For example, EPA has estimated that climate change can exacerbate tropospheric ozone levels in some parts of the U.S. Broadly, EPA states that the effects of climate change observed to date and projected to occur in the future include, but are not limited to, more frequent and intense heat waves, more severe wildfires, degraded air quality, more heavy downpours and flooding, increased drought, greater sea-level rise, more intense storms, harm to water resources, harm to agriculture, and harm to wildlife and ecosystems. The Administrator has determined that these impacts are effects on public health and welfare within the meaning of the Clean Air Act. However, the Administrator does not currently believe that it is possible to quantify with great specificity (i.e. geographic), the various health effects from climate change but, because the risks from unusually hot days and nights and from heat waves are very serious, has proposed to find that on balance that these risks support a finding that public health is endangered even if it is also possible that modest temperature increases will have some beneficial health effects. The EPA findings cite IPCC reports that climate change impacts on human health in U.S. cities will be compounded by population growth and an aging population and GCRP reports that climate change has the potential to accentuate the disparities already evident in the American health care systems as many of the expected health effects are likely to fall disproportionately on the poor, the elderly, the disabled, and the uninsured.

## V. CONCLUSION

With the purpose of informing decision-making, CEQ proposes that the NEPA process should incorporate consideration of both the impact of an agency action on the environment through the mechanism of GHG emissions and the impact of changing climate on that agency action. This is not intended as a “new” component of NEPA analysis, but rather as a potentially important factor to be considered within the existing NEPA framework. Where an agency determines that an assessment of climate issues is appropriate, the agency should identify alternative actions that are both adapted to anticipated climate change impacts and mitigate the GHG emissions that cause climate change. As noted above, NEPA analysis of climate change issues necessarily will evolve to reflect the scientific information available and the legal and policy context of decisions that the NEPA process is intended to inform. Therefore, once this guidance is issued in final form, CEQ intends to revise it as warranted to reflect developments in the law, policy, and science regarding climate change.

## VI. SPECIFIC QUESTIONS FOR PUBLIC REVIEW

In addition to comments on this draft guidance document, CEQ also requests comment on land and resource management issues, including:

1. How should NEPA documents regarding long-range energy and resource management programs assess GHG emissions and climate change impacts?
2. What should be included in specific NEPA guidance for projects applicable to the federal land management agencies?
3. What should be included in specific NEPA guidance for land management planning applicable to the federal land management agencies?
4. Should CEQ recommend any particular protocols for assessing land management practices and their effect on carbon release and sequestration?

5. How should uncertainties associated with climate change projections and species and ecosystem responses be addressed in protocols for assessing land management practices?
6. How should NEPA analyses be tailored to address the beneficial effects on GHG emissions of Federal land and resource management actions?
7. Should CEQ provide guidance to agencies on determining whether GHG emissions are “significant” for NEPA purposes. At what level should GHG emissions be considered to have significant cumulative effects. In this context, commenters may wish to consider the Supreme Court decision in *Massachusetts v. EPA*, 549 U.S. 497, 524 (2007).

After consideration of public comment, CEQ intends to expeditiously issue this guidance in final form. In the meantime, CEQ does not intend this guidance to become effective until its issuance in final form.

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