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National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions

A Notice by the [Council on Environmental Quality](#) on 02/19/2021

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AGENCY:

Council on Environmental Quality (CEQ).

ACTION:

Notice of rescission of draft guidance.

SUMMARY:

The Council on Environmental Quality (CEQ) is rescinding its “Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions” consistent with Executive Order (E.O.) 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.”

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 (<https://www.govinfo.gov/link/uscode/42/4321>) *et seq.*, sets forth a national environmental policy to harmonize environmental, economic, and social goals, and is a cornerstone of the Nation's efforts to protect the environment. *See* 42 U.S.C. 4321 (<https://www.govinfo.gov/link/uscode/42/4321>), 4331 (<https://www.govinfo.gov/link/uscode/42/4331>). NEPA also created the Council on Environmental Quality (CEQ), 42 U.S.C. 4342 (<https://www.govinfo.gov/link/uscode/42/4342>), which oversees its implementation. NEPA requires Federal agencies to consider the environmental effects of its proposed actions and involve the public in its decision-making processes. CEQ's NEPA implementing regulations at 40 CFR parts 1500 (<https://www.ecfr.gov/current/title-40/part-1500>) through 1508 (<https://www.ecfr.gov/current/title-40/part-1508>) set forth the procedures for agencies to comply with NEPA. Additionally, CEQ issues guidance to agencies on how to fulfil NEPA's mandates. *See* 40 CFR 1506.7 (<https://www.ecfr.gov/current/title-40/section-1506.7>).

Many projects and programs proposed, funded, or approved by Federal agencies have the potential to emit or sequester greenhouse gases (GHGs), and may be affected by climate change. Federal courts consistently have held that NEPA requires agencies to disclose and consider climate impacts in their reviews. *See, e.g., Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172 (9th Cir. 2008). On March 31, 2016, CEQ issued “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” (2016 GHG Guidance) to help agencies with this requirement. 81 FR 51866 (/citation/81-FR-51866) (Aug. 5, 2016).

E.O. 13873 (/executive-order/13873), “Promoting Energy Independence and Economic Growth,” directed CEQ to withdraw this guidance. E.O. 13783 (/executive-order/13783), 82 FR 16093 (/citation/82-FR-16093) (Mar. 31, 2017). CEQ withdrew the guidance on April 5, 2017. 82 FR 16576 (/citation/82-FR-16576). CEQ

then proposed for public comment, but never finalized, “Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions” (2019 Draft GHG Guidance). 84 FR 30097 (/citation/84-FR-30097) (June 26, 2019), RIN 0331-ZA03.

On January 20, 2021, President Biden issued E.O. 13990 (/executive-order/13990), “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” to establish a national policy “to empower our workers and communities; promote and protect our public health and the environment; and conserve our national treasures and monuments, places that secure our national memory.” 86 FR 7037 (/citation/86-FR-7037) (Jan. 25, 2021). Section 7(e) directs CEQ to rescind the 2019 Draft GHG Guidance and review, revise, and update its 2016 GHG Guidance. In accordance with this E.O., CEQ is rescinding the 2019 Draft GHG Guidance. The withdrawal of this guidance does not change any law, regulation, or other legally binding requirement. CEQ will address in a separate notice its review of and any appropriate revisions and updates to the 2016 GHG Guidance. In the interim, agencies should consider all available tools and resources in assessing GHG emissions and climate change effects of their proposed actions, including, as appropriate and relevant, the 2016 GHG Guidance. For more information on NEPA and Federal agency compliance with NEPA, please see *nepa.gov*.

Jomar Maldonado,

Associate Director for the National Environmental Policy Act.

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