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## GENERAL MEMORANDUM 15-006

### Guidance on Consideration of Greenhouse Gas Emissions and Effects of Climate Change in NEPA Reviews

On December 24, 2014, the Council on Environmental Quality (CEQ) issued a revised draft guidance document for federal departments and agencies on how to incorporate consideration of climate change in the review of proposed federal actions pursuant to the National Environmental Policy Act (NEPA). Tribes may be interested in this guidance if they are concerned about climate change impacts of particular proposed federal actions, or because a legal requirement for federal approval of a proposed tribal action renders NEPA applicable. 79 Fed. Reg. 77802, available at: <https://federalregister.gov/a/2014-30035>. *The comment deadline is February 23, 2015.*

NEPA is the federal statute that requires each federal agency to prepare an environmental impact statement (EIS) before deciding to proceed with a proposed federal action that would significantly affect the quality of the human environment. Under regulations issued by CEQ, an agency can first prepare a less-detailed environmental assessment (EA) rather than an EIS. If the EA supports a finding by the responsible federal official that the proposed action would not cause significant environmental impacts, then that official signs a finding of no significant impact (FONSI), which fulfills the requirement of NEPA, unless a federal court rules otherwise.

The guidance document is intended for use whether an EIS or an EA is prepared. It addresses climate change in two basic contexts, providing guidance on how to take into consideration: (1) the effects of the greenhouse gas (GHG) emissions attributable to a proposed federal action, and (2) the ways in which climate change is likely to affect the environmental consequences of a proposed federal action.

Effects of GHG emissions of the proposed federal action. CEQ acknowledges that it is difficult to attribute specific climate impacts to individual projects, because climate change results from the cumulative build-up of carbon dioxide and other GHGs rather than from the incremental emissions of any one project, while government action "occurs incrementally, program-by-program and step-by-step." Nevertheless, the guidance says that a statement in a NEPA document that "emissions from a government action or approval represent only a small fraction of global emissions ... is not an appropriate basis for deciding whether to consider climate impacts under NEPA." Rather, if an agency decides not to consider the effects of GHG emissions of the proposed action and alternatives, the guidance says that the agency "should document the rationale for that determination."

To help agencies decide whether to include a quantitative analysis of GHG emissions in a NEPA document, the guidance uses a reference point of 25,000 metric tons of carbon dioxide equivalent on an annual basis. If a proposed action would result in emissions in that range, then the NEPA document should include a quantitative analysis.<sup>1</sup> CEQ believes that using such a reference point is in keeping with a rule of reason and the concept of proportionality. CEQ stresses that it does not mean that this level of emissions is enough, by itself, to render the impacts of a proposed action "significant" such that it would require an EIS. Even in an EA, a quantitative analysis could prove useful, for example, by providing for more serious consideration of energy efficiency and renewable energy options to reduce fossil fuel use.

Effects of Climate Change on the Environmental Consequences of a Proposed Action.

The analysis of the affected environment and the consequences of the proposed action and alternatives must consider how the environment is likely to change whether or not the action is approved. The guidance suggests that the timeframe for the analysis of such impacts can reasonably be limited by the lifespan of the proposed project under consideration. Agencies are encouraged to be aware of the evolving body of scientific knowledge about climate change. This would seem to be an appropriate context for agencies to consider tribal traditional ecological knowledge (TEK), though that is not likely to happen unless the guidance authorizes it.

The guidance document was previously released for public review and comment in February 2010. The FEDERAL REGISTER notice for the revised draft includes an extensive section responding to comments filed on the 2010 draft. The earlier version was not intended to apply to land and resource management activities, but that limitation has been dropped from the current version – the revised draft applies to "all proposed federal agency actions subject to NEPA."

While the guidance is labeled as a draft, CEQ intends for agencies to use it without waiting for the issuance of a "final" version – the document states that federal 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." The guidance is intended to facilitate compliance with the existing legal requirements of NEPA, and this is the apparent rationale for not waiting for the issuance of a "final" version. At numerous points, the guidance provides citations to relevant provisions in the CEQ regulations and court decisions, although the guidance also expressly states that it is not a rule or a regulation, and that its use of mandatory language such as "must" or "required" is intended to describe controlling requirements in NEPA or the regulations and not to establish enforceable requirements in the guidance itself.

Please let us know if we may provide additional information regarding this guidance.

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<sup>1</sup> The Environmental Protection Agency (EPA) has developed a "Greenhouse Gas Equivalencies Calculator" available at [www.epa.gov/cleanenergy/energy-resources/calculator.html](http://www.epa.gov/cleanenergy/energy-resources/calculator.html). This is one example of an analytical tool that can be used in developing a quantitative analysis of GHG emissions.