

# Policy Surveillance on the Impact of Bush's Executive Order 13211 (Requiring Preparation of a Statement of Energy Effects as a Condition to Federal Action) on Environmental and Public Health Policy 329348

Elizabeth Ann Glass Geltman  
Associate Professor & Program Director,  
Environmental & Occupational Health Sciences  
School of Urban Public Health at Hunter College  
CUNY School of Public Health  
CUNY Graduate Center  
APHA 2015

Monday November 2, 2015, 2:30-4:00pm  
3372.0 Innovative Approaches to Evaluating Public Health Laws



# Presenter Disclosures

**Elizabeth Ann Glass Geltman**

**The following personal financial relationships with commercial interests relevant to this presentation existed during the past 12 months:**

**No relationships to disclose.**

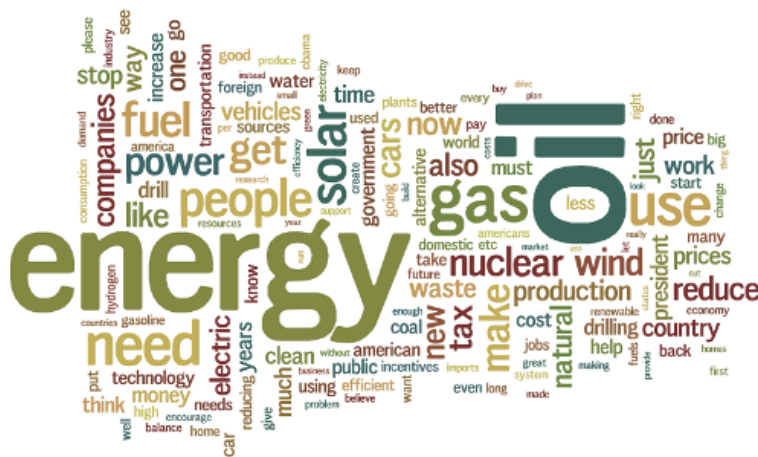
# Background

- ◆ Executive Order (EO) 13211
  - ◆ *Actions Concerning Regulations that Significantly Affect Energy Supply Distribution & Use*
  - ◆ requires federal agencies to prepare a “*Statement of Energy Effects*” (SEE)
  - ◆ OMB outlines nine outcomes that may constitute “a significant adverse effect”
  - ◆ A summary of SEE findings must be included in federal agency proposed and final rulemaking notices.



# Research Question

- ▶ Examine the impact of EO 13211 on public health law (including environmental laws and regulation).



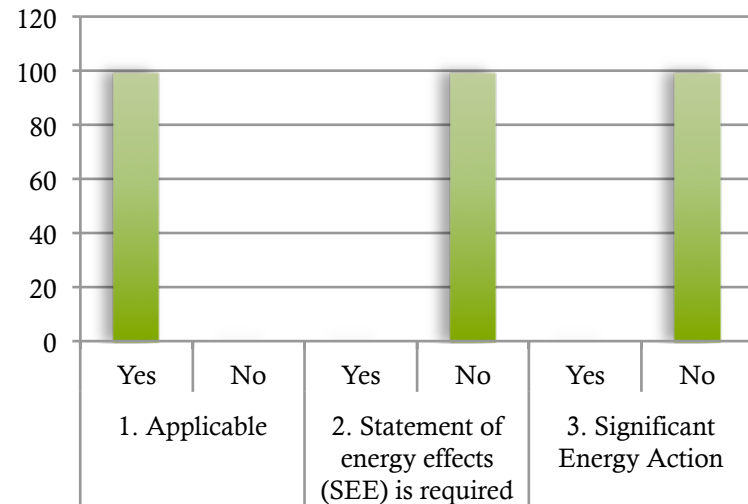
# Coding

- ◆ Agency
- ◆ EO13211 applicable
- ◆ Statement of energy effects (SEE) required
- ◆ Significant energy action
- ◆ Significant adverse effect on the supply, distribution, or use of energy

# Methods: Study 1 Longitudinal

- ◆ We began by collecting documents referencing EO 131211 using LEXIS and <http://regulations.gov>
- ◆ Random sampling across all agencies
  - ◆ from the promulgation of EO13211 until February 1, 2014
  - ◆ 999 documents
  - ◆ reviewed every tenth document
  - ◆ against preset codes using LawAtlas WorkBench.
- ◆ Coders crosschecked each other's work to determine consistency.

## Random Sample of All Federal Agencies: 2002-2015

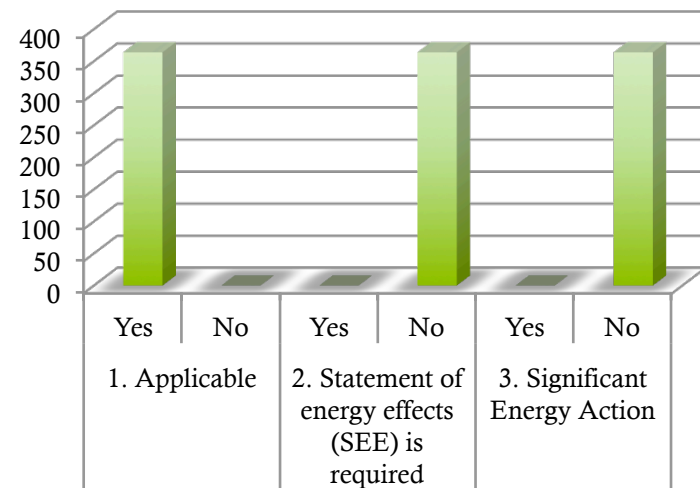




# ESA & Wetlands

- Longitudinal – by select agencies
  - DOI: FWS –364 rulemakings
  - DOT – 24 rulemakings
  - COE –15 rulemakings

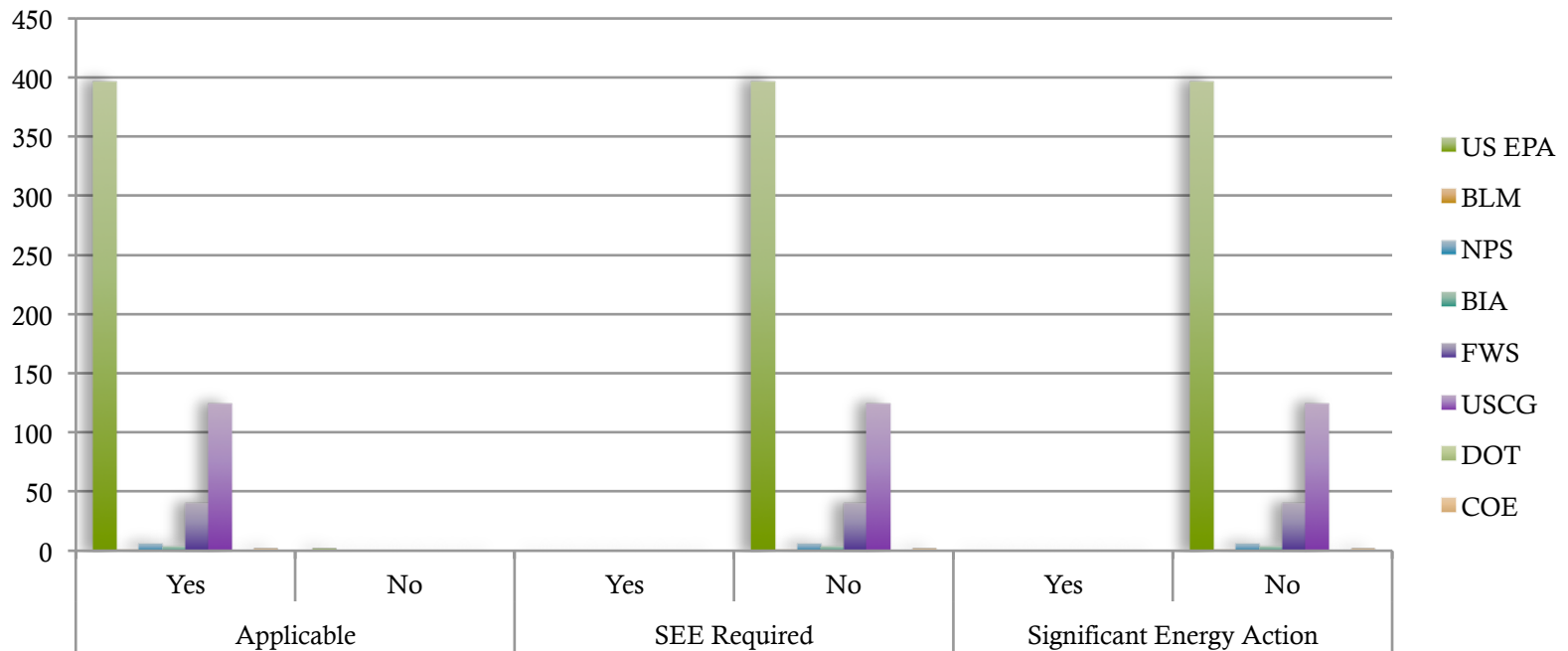
**Sample of FWS  
Rulemakings: 2002-2015**



# Study 2

## Cross Sectional by Select Agencies

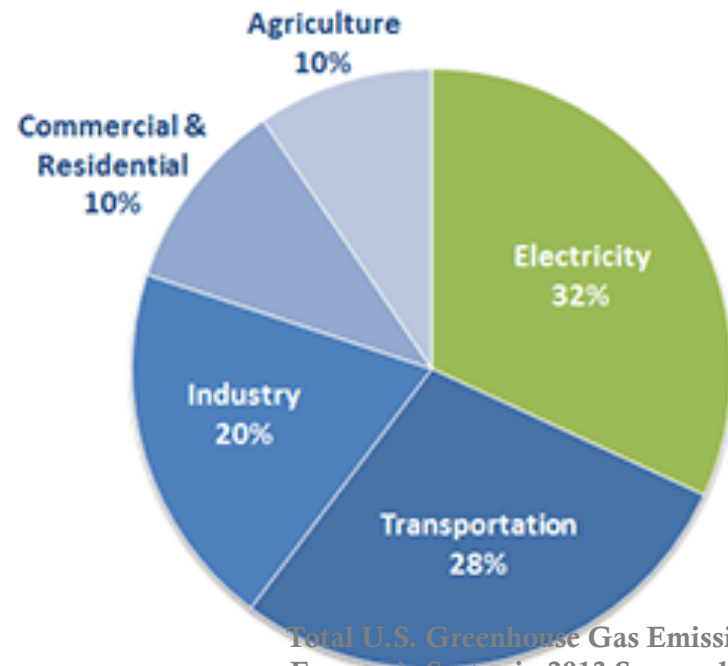
from February 1, 2014 through February 1, 2015





# Methods: Study 2 Cross Sectional by Select Agencies

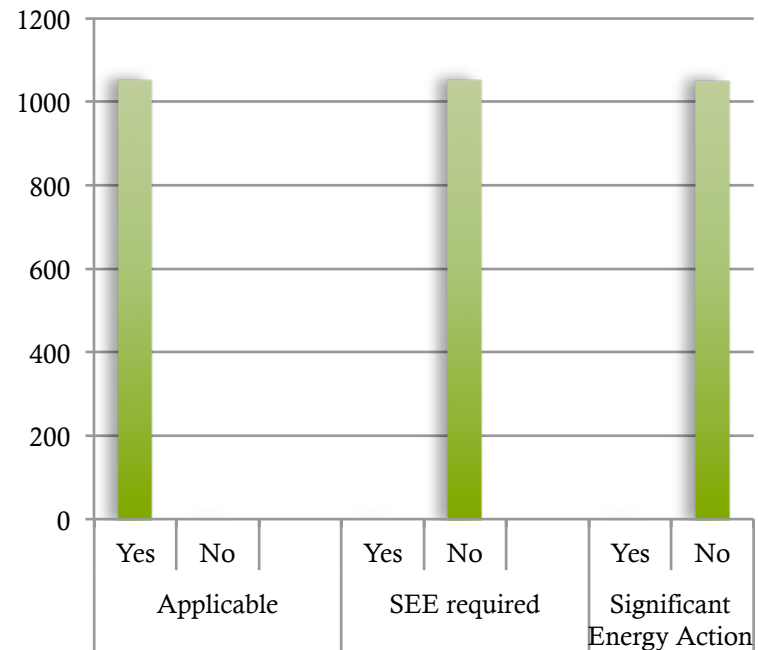
- Analysis applied:
  - EPA Clean Power Plan
  - BLM HVHF Rule



Total U.S. Greenhouse Gas Emissions by Economic Sector in 2013 Source: [http://www3.epa.gov/climatechange/ghgemissions/sources.html#\\_ga=1.95122140.1573269015.1419359656](http://www3.epa.gov/climatechange/ghgemissions/sources.html#_ga=1.95122140.1573269015.1419359656)

# Findings

- ◆ No evidence that EO 131211 had altered proposed environmental or health regulations.
- ◆ Federal agencies treated the SEE as boilerplate needed to complete OMB review.



# Sample Language: USCG

## ◆ *12. Energy Effects*

- ◆ *This proposed rule is not a “significant energy action” under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.*

# Sample Language: FWS

- ◆ **Energy Supply, Distribution, or Use—Executive Order 13211**
- ◆ Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect that the proposed critical habitat designation for the western yellow-billed cuckoo would significantly affect energy supplies, distribution, or use, as the areas identified as proposed critical habitat are along riparian corridors in mostly remote areas with little energy supplies, distribution, or infrastructure in place. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Source: Endangered and Threatened  
Wildlife and Plants: Designation of Critical  
Habitat for the Western Distinct Population  
Segment of the Yellow-billed Cuckoo  
[http://www.regulations.gov/#!  
documentDetail;D=FWS-R8-  
ES-2013-0011-0001](http://www.regulations.gov/#!documentDetail;D=FWS-R8-ES-2013-0011-0001)

# Sample Language: FWS

- ◆ Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because wind energy development is actively occurring in the States with proposed critical habitat, we investigated whether there are any planned projects in the proposed critical habitat in the draft economic analysis. Two wind projects are currently planned or ongoing within or near two occupied proposed critical habitat units in South Dakota: DS South Dakota Unit 17 and DS South Dakota Unit 19. While these projects trigger section 7 consultation, incremental impacts are likely to be limited to administrative effort, because the potentially affected critical habitat units are occupied. We are not aware of any planned or ongoing projects within proposed unoccupied critical habitat, however, existing wind farms are located near several unoccupied units in Iowa, including PS IA Units 2, 3, 4, 6, 7, and 9. Much of the unoccupied habitat in Iowa is owned and managed by entities that are unlikely to pursue wind energy development. Should a project be proposed on or near the unoccupied proposed critical habitat where such development is possible, incremental impacts could occur, however, the timing and magnitude of such impacts are highly uncertain. Although we are unable to predict the likelihood that wind power projects will be proposed in unoccupied critical habitat, the small number of acres potentially affected, combined with relatively modest potential project modification costs, we do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

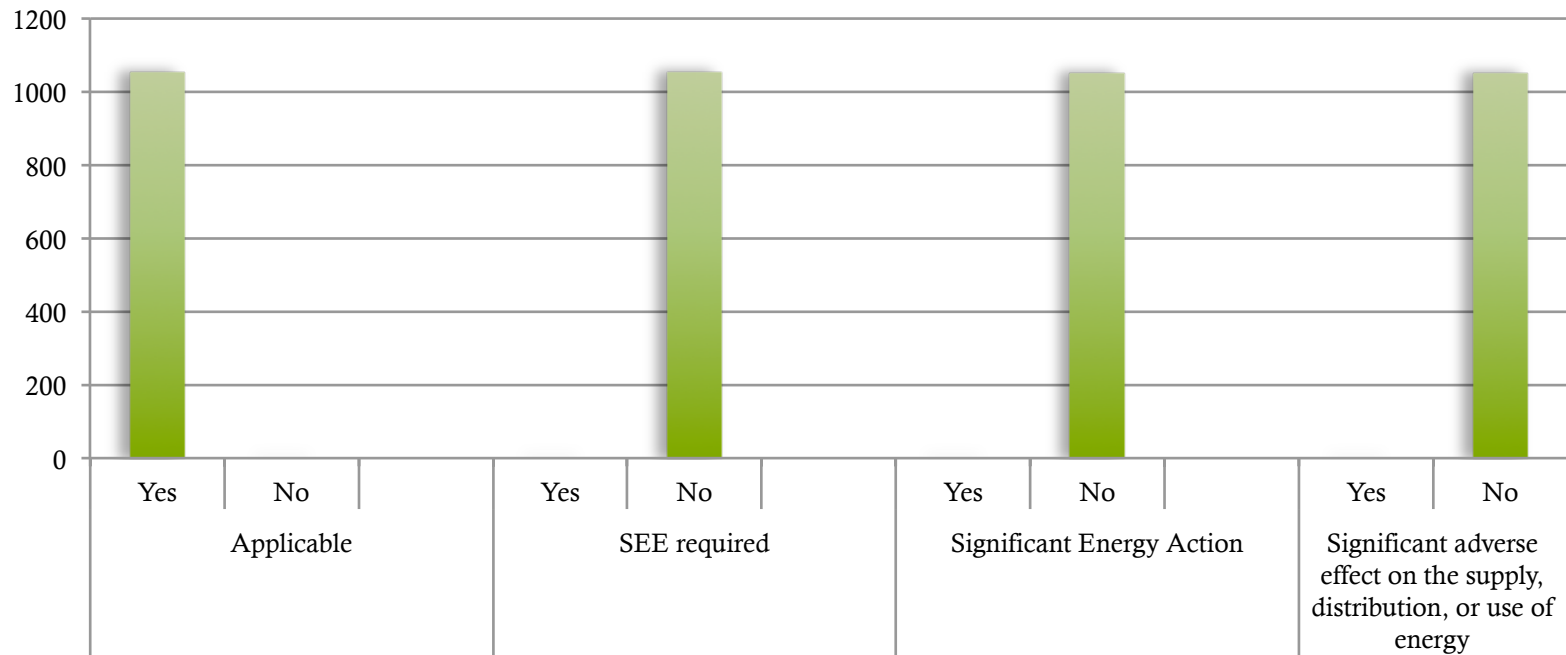
**Source: Endangered and Threatened  
Wildlife and Plants: Listing and  
Designation of Critical Habitat for the  
Dakota Skipper and the Poweshiek  
Skipperling** [http://www.regulations.gov/  
#!/documentDetail;D=FWS-R3-  
ES-2013-0017-0055](http://www.regulations.gov/#!/documentDetail;D=FWS-R3-ES-2013-0017-0055)

# Sample EPA Language: SIP Approval

- ◆ Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:
  - ◆ Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
  - ◆ Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et se.*);
  - ◆ Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et se.*);
  - ◆ Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
  - ◆ Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
  - ◆ Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
  - ◆ **Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);**
  - ◆ Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because it does not involve technical standards; and
  - ◆ **Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).**
- ◆ In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.



# Impact of Executive Order 13211 on Federal Environmental Activities



# Compared with Study of Impact of EO12898

- ◆ *333114 21 Years Later: Has Executive Order 12898 (entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations) worked?*  
<https://apha.confex.com/apha/143am/webprogram/Paper333114.html>
- ◆ Tuesday, November 3, 2015 : 9:10 a.m. - 9:30 a.m.
- ◆ **4030.0 Health Disparities and Environmental Justice - II**

