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GENERAL MEMORANDUM 20-004

CEQ Requests Comments on Proposed Rule to Amend NEPA Regulations

The Council on Environmental Quality (“CEQ”) on January 10, 2020, published a [Notice of Proposed Rulemaking](#) that would update regulations implementing the National Environmental Policy Act (“NEPA”). NEPA requires federal agencies to assess the environmental effects of proposed major federal actions prior to making decisions. CEQ’s proposed changes would restrict NEPA review in significant ways but would also increase opportunities for tribes’ participation in some ways. Written comments are due March 10, 2020.

For example, the proposed rule would reduce the decisions to which NEPA review applies and provide federal agencies significant discretion in determining its applicability. It would limit the definition of “major federal action” to exclude “non-Federal projects with minimal Federal funding or minimal Federal involvement where the agency cannot control the outcome of the project.” It would also add a NEPA threshold applicability analysis that includes examining whether compliance with NEPA would “clearly and fundamentally conflict with the requirements of another statute” or “be inconsistent with Congressional intent due to the requirements of another statute.” These proposed changes are likely to exempt currently-covered federal actions from NEPA review, such as the issuance of permits for otherwise privately funded projects, and give federal agencies significant discretion to implement vague threshold tests.

The proposed rule would also prevent the federal government from considering more removed effects of major federal actions. The proposed rule would remove from the definition of “effect” both indirect and cumulative effects, and it would state that, “effects should not be considered significant if they are remote in time, geographically remote, or the product of a lengthy causal chain.” These restrictions are likely to allow agencies to avoid examining area or national impacts as well as downstream impacts and climate change.

In its proposed rule, CEQ also made some changes designed to increase tribes’ participation in NEPA review, including increasing consultation with tribes and removing provisions that refer only to tribal involvement for effects felt on reservation land.

Please let us know if we may assist you in preparing comments regarding CEQ’s proposed rule modifying the NEPA regulations.

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