Friday, March 6, 2020

The administration has long viewed the National Environmental Policy Act of 1969 (NEPA) as a stumbling block for major federal projects, including energy, infrastructure, pipelines, permitted actions, etc. After 50 years, the Council on Environmental Quality (CEQ) is proposing to limit NEPA reviews. See 85 F.R. 1684 (1/10/2020). CEQ’s regulations have in the past been entitled to deference by courts.

Agency NEPA reviews entail: categorical exclusion for minor projects, environmental assessments (EAs) for less than significant impact projects, and/or full blown environmental impact statement (EISs) for major projects with significant impacts on the human environment. Project impacts and alternatives, including no action, are to be considered by an agency. NEPA requires environmental impact disclosure yet does not require a wise agency environmental decision. The NEPA process has allegedly been exploited by interest groups in courts for delay of projects.

The CEQ’s proposed new NEPA rules will basically make its prior NEPA guidance obsolete. However, CEQ’s prior greenhouse gas guidance remains an issue for these rules or for future guidance. These proposals narrow NEPA, for example, environmental consequences are to be direct and causally related and reasonably foreseeable rather than indirect or cumulative; alternatives are to be within an agency’s authority and feasible for project goals, and many alternatives can be eliminated from detailed study; EAs are generally to be no longer than 75 pages and take no more than one year; and EISs are to generally to be no longer than 150 pages and take no more than two years.
The proposed rules mention administrative stays of actions and also de-emphasize remedies like court injunctions. They also suggest that bonds may be needed for any injunctive relief, and add that irreparable injury is not to be presumed for NEPA violations.

Comments are due on or before March 10, 2020 to CEQ at https://www.regulations.gov.


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