

Trump Administration's Proposed Changes to Environmental Review Regulations Invite Scorn

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Client Advisory

January 15, 2020 by Christopher Rizzo

On January 10, 2020 the federal Council on Environmental Quality ("CEQ") issued a Federal Register notice detailing amendments to the 1970 National Environmental Policy Act that are designed to speed-up and streamline environmental reviews of major federal actions. Environmental advocates immediately derided the amendment as anti-environmental and promised court challenges. In fact, the amendments fall into a few categories—some are helpful (like elevating the status of Indian tribes and creating time limits for reviews) and most merely codify existing court decisions and agency practices (like allowing agencies to publish their own list of exempt actions). A few proposed amendments are, however, genuinely troubling and chief among them is a revision to the definition of "effects" to try and eliminate review of long-term impacts or cumulative impacts among other federal agency actions. (Proposed 40 CFR 1508.1) While the notice does not mention climate change directly, a chief purpose of this amendment is to relieve agencies from the burden of considering the long-term impacts of the project on climate change (and vice versa) as well as prevent project opponents from demanding consideration of how related actions would together contribute to global warming. Proponents of fossil fuel fired power plants, natural gas pipelines or flood-prone projects would be among the chief beneficiaries of the amendments. Lawsuits against CEQ and these amendments are likely to focus on this definition change, which is arguably at odds with the broad and expansive scope of environmental review that Congress and President Nixon intended in 1970. The statute states in part: "The Congress authorizes and directs that, to the **fullest extent possible**: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government **shall [evaluate]...any adverse environmental effects** which cannot be avoided should the proposal be implemented." 42 U.S.C. 4332 (emphasis added).

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