

# Understanding the 2020 Revised CEQ NEPA Implementing Regulations – Implications for Tribes

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## Description

In July, 2020 the White House Council on Environmental Quality (CEQ) issued its final rule modifying the implementing procedures of the National Environmental Policy Act (NEPA) codified at 40 CFR Parts 1500-1508. These proposed changes follow numerous other regulatory reform proposals targeting streamlining of environmental permitting review processes initiated in recent years. With this new rulemaking, CEQ has made the most significant changes to the NEPA regulations since they were first issued in 1978. The changes are comprehensive and include:

- Changes to defining the scope of effects required in NEPA analyses, including removing the direct requirement to include cumulative effects analysis
- Changes to defining a “major federal action” that potentially will limit the number of actions requiring NEPA review
- Setting page and time limits for preparing Environmental Assessments (EA) and Environmental Impact Statements (EIS)
- Adding additional requirements for EISs and Records of Decision (ROD)
- Changes to alternatives analysis requirements
- Codifying the “One Federal Decision” requirement for EISs
- Allowing applicants to prepare EISs under agency supervision
- Changes in the use of Categorical Exclusions
- Changes to public participation expectations and specificity of comments required

There is much confusion and debate about what the new rule does and does not change about NEPA practice. This workshop will provide participants with a comprehensive understanding of

the key changes to the 1978 regulations, and what they mean for NEPA practitioners. While some changes to the rule are straightforward and easily summarized, others require additional analysis and discussion and will likely generate confusion and litigation over the coming months and years. This workshop will focus on the changes that are likely to be most impactful to tribes and tribal interests, including changes in the regulations focusing on increasing/broadening the role of tribes in the NEPA process, how NEPA intersects with other federal environmental laws and permitting processes including the Endangered Species Act and Section 106 of the National Historic Preservation Act, and changes to the commenting process for federal agency NEPA EAs and EISs.

## Objectives

Upon completing this workshop, participants will be able to:

- Comprehensively interpret what the new CEQ Implementing Regulations require for NEPA practice, and how they differ from the 1978 version of the implementing regulations that have been in use for over four decades
- Distinguish between unambiguous, clear requirements in the new regulations versus new provisions that trigger uncertainty in how they will be implemented
- Develop a framework for risk management that can be used to determine how best to proceed in implementing the new regulations in federal agency NEPA practice

## Content

The basic format of the interactive workshop includes the following components:

- Unit 1: Comprehensive Overview of history and case law leading to the 2020 Revised CEQ NEPA Implementing Regulations
- Unit 2: Key Changes from the 1978 Version of the Regulations
- Unit 3: Guidance and discussion on suggested approaches to Implement the New Regulations from a NEPA Practitioners Perspective.
- Unit 4: Risk Management and Update on Court Decisions/Case Law Involving CEQ's Rulemaking for the 2020 Revised NEPA Implementing Regulations

## Audience

Participants for this training generally include resource specialists, team leaders, project managers, decisionmakers, attorneys, writers and editors, and other agency professionals who already have some NEPA experience and need to understand these important changes to how NEPA is implemented to fully execute their responsibilities in an optimal manner.

# Process

This is an interactive workshop designed to build an overall understanding of the implications of the changes to the CEQ NEPA Implementing Regulations. This workshop consists of a carefully designed combination of the following:

- 60% Lecture
- 40% Discussion

# Materials

Participants receive the following:

- Presentation handouts
- Student reference manual