

Summary of Tribal-specific Provisions in the Council on Environmental Quality’s National Environmental Policy Act Implementing Regulations Revisions Phase 2 Proposed Rule

In the Phase 2 proposed rule, the Council on Environmental Quality (CEQ) is proposing to add or modify several Tribal-specific provisions in its NEPA regulations. The following summarizes these proposed changes and provides a reference to where the provisions are located within the proposed rule text.

Engagement and Coordination with Tribes and Tribal Governments

The proposed rule includes several new or updated provisions to ensure that agencies respect and consider the rights of Tribal Nations in the environmental review process and ensure that Tribes have opportunities to meaningfully engage in the environmental review process. The proposed rule:

- Modernizes language to emphasize public engagement, including meaningful engagement with communities with environmental justice concerns, which often include communities of color, low-income communities, indigenous communities, and Tribal communities. (§ 1500.2(d))
- Emphasizes the importance of Federal agencies providing opportunities for early engagement in the environmental review process, including with Tribal governments. (§ 1501.1(b))
- Specifies that, at the invitation of a Federal lead agency, a Tribal agency may serve as a joint lead agency to prepare an environmental impact statement of environmental assessment. (§ 1501.7(b))
- Amplifies the use of Indigenous Knowledge as a source of relevant expertise for cooperating agencies and help ensure Federal agencies can benefit from the unique knowledge Tribal Nations may bring to the environmental review process. (§ 1501.8(a))
- Adds additional emphasis on public and governmental engagement, including encouraging that Federal agencies determine the appropriate methods of public and governmental engagement and encouraging that agencies invite the participation of likely affected agencies and governments, including Tribal governments, as early as practicable and, where appropriate, as cooperating agencies. (§ 1501.9(a), (b), and (c))

Consideration of Tribal resources when Evaluating Significant Effects

The proposed rule restores the longstanding approach for how Federal agencies determine the whether the effects of a proposed action are significant to ensure that agencies conduct the proper level of environmental review. In addition to restoring this approach, the proposed rule includes updates to the list of items agencies must consider, including to add Tribal-specific considerations. Specifically, the proposed rule adds consideration of:

- Proximity to unique or sensitive resources or vulnerable communities. (§ 1501.3(d)(1))

- The degree to which the proposed action may adversely affect unique characteristics of the geographic area, including historic or cultural resources and Tribal sacred sites. (§ 1501.3(d)(2)(iii))
- The degree to which the action may adversely affect rights of Tribal Nations that have been reserved through treaties, statutes, or Executive Orders. (§ 1501.3(d)(2)(x))

Identification of the Environmentally Preferable Alternative

The regulations previously required Federal agencies to identify the environmentally preferable alternative in the record of decision. The proposed rule:

- Requires Federal agencies to identify the environmentally preferable alternative in the environmental impact statement to ensure that interested parties, including Tribes, can provide input on that alternative during the environmental review process. (§ 1502.14(f))
- Includes as an example of an environmental preferable alternative as one that protects, preserves, or enhances historic, cultural, Tribal, and natural resources, including rights of Tribal Nations that have been reserved through treaties, statutes, or Executive Orders.

Updating Definitions

The proposed rule updates or adds several definitions, including adding a definition for environmental justice (§ 1501.8(k)) and adding a definition for “joint lead agency,” including clarification that a Tribal agency may be designated as a joint lead agency (§ 1508.1(q)). Further, the proposed rule makes updates to the definition of “major Federal action,” including by adding:

- A new exclusion for activities or decisions for projects approved by a Tribal Nation that occur on or involve land held in trust when the activities involve no Federal funding or other Federal involvement. (§ 1508.1(u))
 - This exclusion would clarify that activities or decisions for projects approved by a Tribal Nation on trust lands are not major Federal actions where such activities do not involve Federal funding or other Federal involvement.