Establishing, Revising, Adopting, and Applying Categorical Exclusions Under the National Environmental Policy Act: Counsel on Environmental Quality Memorandum

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The White House Council on Environmental Quality ("CEQ") issued an April 9th memorandum to the heads of federal departments and agencies styled:

Establishing, Revising, Adopting, and Applying Categorical Exclusions Under the National Environmental Policy Act ("Memorandum").

CEQ's duties include oversight of federal implementation of the National Environmental Policy Act ("NEPA").

NEPA requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions. The range of actions covered by NEPA is typically broadly defined to include as examples:

- Making decisions by federal agencies on permit applications.
- Federal land management actions.
- Construction and/or funding of highways and other publicly owned facilities.

The federal agencies are required to evaluate the environmental related social and economic effects of their proposed actions. Agencies also are required to provide opportunities for public review and comment on those evaluations.

NEPA requires federal agencies in certain instances to prepare a detailed Environmental Impact Statement. However, the requirement to produce this document is only triggered in the event of a "major federal action" that will significantly affect the environment. An Environmental Impact Statement need not be prepared if a particular federal action falls within the scope of a NEPA categorical exclusion. Categorical exclusions are promulgated by the federal agencies and are described as actions which have been determined to not involve significant environmental impacts.

The April 9th CEQ Memorandum states that it has:

… long emphasized the importance of categorical exclusions as a core feature of NEPA practice to facilitate efficient and effective reviews in accordance with Congress's intent.

Congress is stated to have expressly directed agencies to consider which categories of actions they perform “normally” that do not have significant effects. As a result, the Memorandum states that agencies should establish categorical exclusions to cover such categories of actions, adopt other agencies’ categorical exclusions where appropriate, and in all instances consider whether a categorical exclusion applies to a particular proposed action before beginning to develop an EA or EIS for that proposed action.

The Memorandum addresses:

- Process for Establishing and Revising Categorical Exclusions.
- Establishing and substantiating a categorical exclusion.
- Revising a categorical exclusion.
- Joint establishment of a categorical exclusion.
- CEQ review for establishing and revising categorical exclusions.
- Removing a Categorical Exclusion.
- Adopting a Categorical Exclusion from Another Agency.
- Applying Categorical Exclusions to Particular Agency Actions.

A copy of the Memorandum can be found here.