

U.S. Forest Service National Environmental Policy Act Regulations: Proposed Revisions



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The United States Forest Service (“Service”) published a proposal in the June 13th Federal Register that contains a package of revisions to its National Environmental Policy Act (“NEPA”) regulations. See 84 Fed. Reg. 27544.

The Service states that the purpose of the revisions is to increase efficiency in its environmental analysis while meeting NEPA’s requirements.

NEPA requires federal agencies to include environmental values and issues in their decision-making processes. This federal mandate is accomplished by agency consideration of environmental impacts of proposed actions and reasonable alternatives to those actions. The statute requires federal agencies in certain instances to prepare a detailed Environmental Impact Statement (“EIS”). However, the requirement to produce this document is only triggered in the event of a major federal action that will significantly affect the environment.

NEPA differs from action enforcing environmental statutory programs such as the Clean Air Act or Clean Water Act. It does not impose substantive mandates. Instead, it is limited to requiring federal agencies to meet procedural requirements such as preparation of an Environmental Assessment (“EA”) or EIS in certain defined instances. As a result, NEPA does not require an agency to pick a certain alternative or meet a particular standard.

NEPA tasks the Council of Environmental Quality to establish rules to guide federal agency compliance. However, the federal agencies also establish their own rules for purposes of following NEPA’s procedural mandates. As a result, the Service has had in place regulations addressing NEPA for many years. The Service’s NEPA regulations are found at 36 C.F.R. 220.1 et seq.

The Service states that revision of its NEPA rules is needed for various reasons, which include:

- An increasing percentage of the Service’s resources have been spent each year to provide for wildfire suppression (leaving fewer resources for other management activities)
- A shift in funding of staff from non-fire to fire programs
- New budget authority of over \$20 billion for fighting wildfires (in addition to regular appropriations)
- The referenced developments increasing importance of making more efficient use of available funding to undertake required environmental analysis
- A backlog of more than 5,000 applications for new special use permits and renewals of existing special use permits requiring environmental analysis

Revisions would include addition of a definition for a “condition-based management” and revising the language in the General Requirements of the regulations.

The revisions also address NEPA categorical exclusions. Categorical exclusions are promulgated by a federal agency and are described actions which have been determined to not involve significant environmental impacts. The Service is proposing what it describes as clarification of certain existing categorical exclusions and creation of new ones.

Proposed categorical exclusions would be created for activities such as:

- Restoration projects
- Roads and trails management
- Recreation and facility management
- Special use authorizations that issue permits for outfitters and guides, community organizations, civic groups and others who seek to recreate in national forests and grasslands

A copy of the Federal Register Notice can be found [here](#).