

U.S. Department of Energy/National Environmental Policy Act: Notice of Proposed Rulemaking Addressing Implementing Procedures



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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The United States Department of Energy (“DOE”) published in the November 16th Federal Register a proposed rule that would revise its implementing procedures for governing the agency’s compliance with the National Environmental Policy Act (“NEPA”). See 88 Fed. Reg. 78681.

DOE states that the revisions encompassed by the proposed rule are based on:

- Experience of DOE
- Experience of other federal agencies
- Current technologies
- Industry regulatory requirements
- Accepted industry practice

NEPA requires federal agencies to include 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 prepare this document is only triggered in the event of a major federal action that will significantly affect the human environment.

As opposed to an EIS, which is a much more detailed document, an environmental assessment (“EA”) provides sufficient evidence and analysis for determining whether a finding of no significant impact for an EIS should be prepared. Neither an EA nor an EIS need 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 actions which have been determined to not involve significant environmental impacts.

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 EA or EIS in certain defined instances. As a result, NEPA does not require a certain alternative or meet a particular standard.

The White House Council on Environmental Quality (“CEQ”) duties include oversight of the federal implementation of NEPA. Regulations issued by CEQ are intended to guide the federal agencies in

interpreting NEPA's procedural requirement. However, the federal agencies (such as DOE) themselves typically have in place regulations that address NEPA requirements applicable to its activities.

DOE states that the changes it is proposes would include:

- Adding a categorical exclusion for certain energy storage systems
- Revising categorical exclusions for upgrading and rebuilding transmission lines
- Revising categorical exclusions for upgrading and rebuilding solar photovoltaic systems
- Making conforming changes to related sections of DOE's NEPA regulations

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