

Questions and Answers about the Final NEPA Procedures

What is the purpose of the NEPA procedures final rule?

The Forest Service NEPA procedures rule places Forest Service procedures for implementing NEPA in the Code of Federal Regulations (CFRs). The Forest Service NEPA procedures encourage public involvement and access to project planning and analysis throughout the NEPA process rather than only early in the planning process, during scoping, and late, during public comment periods for EAs and draft EISs. The NEPA procedures rule also clarifies both Forest Service and CEQ NEPA procedures and updates Forest Service procedures.

When the Forest Service first developed implementing directions for NEPA in 1979, it chose to combine the CEQ implementing procedures and the Forest Service guidance together in the Forest Service Directive System (i.e., Forest Service Manuals and Handbooks.)

The NEPA procedures rule separates the Forest Service's NEPA procedures (what to do) for implementing NEPA from its internal guidance on *how to* implement NEPA. The procedures will become part of the Code of Federal Regulations and the guidance will remain in the Forest Service Directives System. The CFRs for the Forest Service NEPA procedures also include the Council on Environmental Quality (CEQ) guidance memos issued since the Forest Service NEPA procedures were developed. Including this guidance will make the regulations more up-to-date.

By including its NEPA procedures in the CFRs, The Forest Service is joining other federal agencies that already have their NEPA procedures in the Code of Federal Regulations.

How does the NEPA procedures final rule differ from NEPA procedures that were previously in the Forest Service handbook?

It incorporates CEQ guidance memos into Forest Service procedures. The rule:

- Clarifies what past actions need to be considered in a cumulative effects analysis.
- Clarifies how alternatives considered in EAs can be documented.
- Recognizes that sometimes the Forest Service has to take *immediate* emergency responses.

It aligns NEPA procedures and documents with natural resource decision making. The rule:

- Clarifies when Federal actions are subject to NEPA.
- Provides for alternative procedures in emergency situations.
- Allows “adaptive management” proposals and alternatives so Forest Service decisions can respond to the uncertainties of natural resource management.
- Allows the responsible official to modify a proposed action or alternatives as the analysis progresses as long as the analysis is done collaboratively and it is clear and obvious to anyone interested. It must also be properly documented.

What did the Forest Service hear from people who commented on the draft? What changes did the Forest Service make between the draft rule and the final NEPA procedures rule?

A summary of the public comments is available for public review on the Forest Service’s web page (www.fs.fed.us/emc/nepa/nepa_procedures/includes/summary_public_comment.pdf).

The preamble to the final rule summarizes all the comments and provides responses to those comments. The responses describe what changes were made in response to comments – or why the language was not changed even though some people provided comments about a particular aspect of the rule.

Based on comments from the public and other agencies on the draft NEPA procedures rule, we made some changes to the final regulation. Many of the changes are editorial for clarity. More substantive changes include the following:

220.3 Definitions

Schedule of Proposed Actions was added to the definitions and deleted in large part from section 220.4(d) for better alignment with Regulation language.

Preliminary Environmental Impact Statement was deleted from definitions and 220.5 due to confusion surrounding intent and perceived requirements.

220.4 General Requirements

(b) Emergency responses: (2) the term important resources was changed to important natural and cultural resources in response to concerns regarding potential broad interpretation of what an important resource is.

220.5 Environmental Impact Statements

(a) Classes of actions: The examples include the language “Examples include but are not limited to” to address the concern the examples are too limiting.

(a)(2) Class 2 – the term inventoried roadless area was replaced with “inventoried roadless area or potential wilderness area”. Language was also added to the preamble to explain under what circumstances inventoried roadless area would be used vs. potential wilderness area.

(a)(3) Class 3 – ‘Other proposals to take major Federal actions that may significantly affect the quality of the human environment’ was deleted because it is not a ‘class of actions’ and such proposals would always require an EIS – not just normally.

(e)(1) The description of how the effects of the no-action alternative could be depicted was dropped due to confusion regarding how this would be used and the EIS requirement for no-action alternative.

(e)(2) The language on collaborative processes was dropped as it raised several concerns and was primarily explanatory.

(f) The environmental effects provision was deleted because it was confusing to people and was redundant to the CEQ regulations.

(g)(2) Preliminary EISs were dropped as explained above.

220.6 Categorical Exclusions

(e) Categories requiring a project file and decision memo. Added a sentence clarifying that the plan approval document required by 36 CFR 219.7 satisfies the decision memo requirements when the proposed action is a land management plan.

What does the final rule allow that the previous handbook did not?

The final rule specifically allows alternatives to be developed as the analysis progresses. The Forest Service and interested parties may collaboratively develop alternatives and amend a proposed action. Present regulations are silent on this point.

The final rule incorporates adaptive management into its procedures. This will allow the Forest Service to make mid-course corrections when implementation of plans leads to unexpected outcomes or when monitoring finds that parts of the plan have not been as effective as was predicted when the plan was adopted. Present regulations are silent on this point.

The final rule allows alternatives to be developed incrementally in an open and transparent process. The proposed action and alternatives may change as the NEPA process progresses, but they must be developed in an open and transparent way with interested individuals, groups, and agencies, and this process must be documented.

What will be in the Forest Service Directive System relevant to NEPA?

The Forest Service Manual 1950 addresses Forest Service objectives for NEPA, Forest Service NEPA policies, and identifies Forest Service officials responsible for the NEPA process and describes their roles. Internal Forest Service explanations interpreting CEQ and NEPA procedures remains in FSH 1909.15. The Handbook includes some additional

explanations to help the field implement the procedures such as definitions or charts explaining a particular process.

Did the Forest Service prepare an environmental impact statement on the final NEPA procedures rule?

No. The Council on Environmental Quality (CEQ) does not direct agencies to prepare a NEPA analysis or document before agencies establish procedures that supplement CEQ's implementing regulations. In addition, an environmental impact statement is not required because the rule will not directly affect the environment. The rule does not propose or limit a particular proposed action or have any direct effect on the environment.

Will the NEPA procedures regulations take away the public's ability to comment on projects?

The regulations do not take away or limit the public's ability to comment on projects. The rule incorporates the existing language on public comment currently in the CEQ regulations as well as the Forest Service procedures that were previously in the Forest Service Directives System. Moreover, the NEPA procedures regulations are intended to let interested parties become more effectively engaged in the decision making process rather than merely as reviewer of proposals and final documents. Specifically, the regulations include an option for responsible officials to incrementally develop, modify, and document proposed actions and alternatives through an open and transparent process.

How will the NEPA procedures make it easier for the public to work with the Forest Service?

Hearing the public's ideas is important throughout the NEPA process rather than just at the beginning and end. The final rule allows the Forest Service to respond to new ideas during analysis. The Forest Service environmental analysis and decision making processes will now be more open and transparent to the public.

The final rule integrates NEPA and an open and transparent process making the Forest Service NEPA process more interactive with the public. Instead of analyzing an unnecessarily large number of alternatives, we will fully analyze only those alternatives that are feasible to implement. This will help interested stakeholders and the Forest Service focus only on viable alternatives and thus be more efficient with their time and energy. The final rule also incorporates the Council on Environmental Quality's latest guidance on how to enact different aspects of NEPA based on many years of experience.

Will placing the Forest Service Handbook and Manual implementing NEPA procedures in regulation reduce the Forest Service’s flexibility.

Some people feel placing CEQ guidance in the Code of Federal Regulations makes the Forest Service more accountable and the rule is more enforceable. At the same time, others feel the Forest Service will be in a stronger position in the courts because the new NEPA procedures rule now includes optional procedures such as adaptive management and an open iterative alternative development process.

The Forest Service is obligated to abide by its NEPA implementing procedures, no matter where they are, in the Code of Federal Regulations or in the Forest Service Manual and Handbook. Collectively, the CFRs and Forest Service Directives System are Forest Service policy and are therefore binding. Where they are located does not affect the Forest Service’s flexibility to make sound land management decisions.

While NEPA procedures are now in the CFRs, the Forest Service is keeping its guidance on how to implement the NEPA regulations in the Forest Service Handbook where they are immediately available to our employees and can be updated more readily.

How will putting procedures in Code of Federal Regulations make field-level NEPA analysis easier and more effective?

The final rule aligns the environmental analysis process with today’s Forest Service practices on decisionmaking, collaboration, and adaptive management. Developing alternatives in an open and transparent manner and being able to modify the alternatives as the analysis process progresses, will increase the field’s efficiency because we will not have to analyze alternatives that are not feasible or would never be considered. For proposals that fit this model, having the public actively involved as the analysis progresses may reduce appeals and litigation.

Will the NEPA procedures reduce paperwork and time to plan projects?

The final rule will help reduce paperwork and time spent planning projects for the following reasons:

- Cumulative effects analysis incorporating past actions will be more relevant by only analyzing effects of past actions that may cause effects on the proposed action or cause effects when combined with the proposed action.
- Alternatives, including the proposed action, may be modified as the analysis progresses allowing analysis to focus only on viable alternatives.
- The rule may reduce future analysis, by allowing a proposed action to be adapted to changing conditions as it is developed and implemented. If there are no unresolved conflicts, environmental assessments only have to analyze the proposed action.

- CEQ guidance for concise and focused EAs is incorporated, allowing for efficient analysis of alternatives and documentation of decision making.

What is adaptive management?

Adaptive management is a system of management practices based on clearly identified outcomes and monitoring to determine if management actions are meeting desired outcomes; and, if not, to facilitate management changes that will best ensure that outcomes are met or re-evaluated.

How does the final rule handle categorical exclusions?

The final rule incorporates Forest Service Handbook language without change, except:

- For clarity, the rule changes the title of the section from “Categories Established by the Chief” to “Categories of Actions for which a Project or Case File and Decision Memo are not Required,” and
- The rule makes minor clarifying edits to the section on documenting categorical exclusions in decision memos.

The rule is moving established categories and language on extraordinary circumstances from FSH 1909.15 to 36 CFR 220.6. These categories and requirements were established with public review and comment, in consultation with CEQ and with CEQ’s concurrence.

The Forest Service felt the categorical exclusions currently in existence are best left unaltered. If new categories are added or existing ones are changed in the future, they would be available for public comment and review.

Why does the final NEPA procedures rule still include Category 10 when the 9th Circuit Court recently ruled against the Forest Service using it?

In December 2007, the 9th Circuit issued an opinion regarding the categorical exclusion for hazardous fuels reduction activities (S.220.6(e)(10), in *Sierra Club v. Bosworth*, 510 F.3d 1016 (9th Cir. 2007). The Forest Service asked the Circuit Court to rehear the case, but in June 2008 the 9th Circuit declined to do so. At this time, no final judgment or injunction against the use of the CE has been issued in that case, but the District Court is expected to take up the matter soon. Because judicial proceedings are ongoing and not completed, the category is being retained subject to the continued instructions of the Chief that Forest Service officials must refrain from use of this category while the litigation remains unresolved.

The Forest Service will fully comply with all final orders and instructions from the courts involved. Once the judicial process has been concluded, the category will either remain or be removed, depending upon the litigation’s outcome. If, at a later date, the

Department of Agriculture determines changes need to be made to section 220.6 those proposed changes will be made in consultation with CEQ and made available to the public for review and comment.

How will the final NEPA procedures rule affect environmental assessments (EAs)?

The NEPA procedures rule makes the following improvements to guidance on EAs:

- Incorporates CEQ guidance about there being no standard EA format.
- When there are no unresolved conflicts about alternative uses of available resources, only the proposed action must be analyzed.
- Does not require a stand-alone “No Action” alternative. Shows an alternative way to display the effects of “no action.” Allows alternatives, including the proposed action, to be modified during the analysis process, provided modifications are documented.
- Allows for adaptive management alternatives.

How will the final NEPA procedures rule affect environmental impact statements (EISs)?

The NEPA procedures rule makes the following improvements to guidance on EISs:

- The classes of actions now state “normally” requiring Environmental Impact Statements. The term “normally” was added in order to be consistent with CEQ regulations for agency NEPA procedures that require agencies to identify typical classes of action which normally do require environmental statements (40 CFR 1507.3 (b)(2)(i)). The Agency maintains it would be extremely rare for the agency not to prepare an EIS given the circumstances described in the classes.
- Provides for any number of alternatives (no set number).
- Allows alternatives, including the proposed action, to be modified during an open and transparent analysis process, provided modifications are documented.
- Allows for adaptive management alternatives.

How will the final NEPA procedures rule affect appeals?

The appeals regulations, including how the public files an appeal and what actions are subject to appeal are not changed in any way by the final NEPA procedures rule.

--