

Quick Reference: National Environmental Policy Act (NEPA)

Codified: 42 U.S.C. §4331 et seq.

Regulations: 40 C.F.R. pts 1500-1508

Date Enacted: 1969

Amendments: None

Implementing Agency: The Council on Environmental Policy

Purpose: Section 2 of NEPA declares that the purpose of the Act is to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; and to enrich the understanding of the ecological systems and natural resources important to the Nation.

Scope of Application: NEPA applies to all major federal actions, thus affecting all federal agencies.

Required Permit: No permits.

State Implementation: None.

Enforcement: The most common form of relief in NEPA cases is the preliminary injunction, which temporarily stops the actions by the defendant agency until it complies with its responsibilities under NEPA. Many NEPA plaintiffs also ask the court for declaratory relief in addition to their request for an injunction, which specifies the legal obligations of the defendant agency. Unlike other environmental statutes, there are no monetary penalties because an agency fails to comply with NEPA requirements. Further, so long as an agency has adequately considered alternatives to the proposed project and adequately examined the impacts of each alternative, the agency may choose any of the alternatives regardless of substantive impact.

Summary of the major provisions: NEPA contains three core sections. Section 101, often called “substantive NEPA”, is a lofty statement of national environmental policy goals. Section 102, “procedural NEPA”, requires an environmental impact statement to be prepared for all major Federal actions that significantly impact the environment. Finally, Title II of NEPA establishes the Council of environmental Quality (CEQ), an Executive Office of the President, with responsibility for promulgating regulations to implement NEPA.

The procedural requirements of NEPA have the greatest impact on agency actions because they require federal agencies to prepare a detailed statement, which is called an “environmental impact statement” (EIS), for all major federal actions. An EIS is meant to guarantee that no federal agency will conduct its business without at least considering the adverse environmental consequences of its action. Agencies do not have to prepare an EIS for before undergoing every action. In many cases, the agency will first

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prepare an Environmental Assessment (EA). If the EA indicates that the action will not significantly impact the quality of the environment, the Council on Environmental Quality issues a Finding of No Significant Impact (FONSI) and no EIS need to be prepared.

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