



Understand the process: National Environmental Policy Act (NEPA)

FS NEPA regulations are constantly changing but as a federal agency, they must comply with Council on Environmental Quality rules: [Forest Service NEPA Regulations](https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=47c103e07fd64e933c7f74c4b3c4ac9a&rgn=div5&view=text&node=36%3A2.0.1.1.9&idno=36)
<https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=47c103e07fd64e933c7f74c4b3c4ac9a&rgn=div5&view=text&node=36%3A2.0.1.1.9&idno=36>

1. Understand that the Forest Service functions under administrative law
 - a. Administrative process is governed by the Administrative Procedures Act
 - b. The agency will be constantly thinking about how their document might look in a court of law should it end up there
 - c. You must look at their document the same way and be thinking, "how will my comments help build a legal argument that can be used in court?"
 - d. This is the only way the public can influence the process!**

Goals of comment writing:

- a. Goal #1 - Change the document
- b. Goal #2 - Get the agency to remove their bias against OSV from the document

How do we achieve these goals?

NEPA documents are an analysis. They must reflect the data and methods used to arrive at the conclusions in the document – the goal is to get them to change the document for the better.

1. Identify flaws in the analysis, errors and omissions
 - a. Omission of important facts, data
 - b. Incorrect citations

2. Request changes in the document by submitting substantive comments
 - a. Comments must be substantive to be accepted as relevant
 - b. Comments must address only material in or related to the document to be accepted

Definition of a substantive comment

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Substantive comments must relate to information or issues presented in the document.

- a. Specific to the proposed action under discussion, directly related to the proposed action
- b. Accompanied by supporting information for the responsible official to consider

Ground rules for comment writing: Do's and Don'ts

Do:

- Change questions into statements
- Provide evidence your statement is correct
- If you identify an error or omission, tell them what to do about it
- Provide new information
- Provide supporting information to back up your assertions
- Be specific – cite page numbers, references

Don't:

- Never ask why, never ask how
- Asking questions will give the agency the opportunity to provide answers, but not a change the document.

The goal is to get them to make changes in the document

Possible Arguments:

- Tell them to further describe areas claimed to be disturbed and research justifications to these areas
- Look for areas in the document that are hearsay, or speculative
- Identify statements that rig the outcome or unduly limits outcome

Important - Identify statements outside legal authority of the agency

1. The agency has no authority over "user conflict", only "conflict of uses". Evidence of conflict is hearsay, can't be regulated and is almost never documented!
2. Reallocation of recreational opportunity from motorized to non-motorized reveals a covert effort to favor 'human-powered' modes of recreation
3. They have to articulate a connection between facts found and conclusions reached.
4. Corrupted research forms the basis for the assertion that they are making an "arbitrary or capricious" decision'

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A "flawed analysis" assertion can be based on any of the following:

- A disconnect between data and conclusions
- Conflict between statements of different specialists
- Conflicting data tables
- Lengthy discussion of an issue without mention of OHV
- Corrupted research

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