



Edward A. Boling, Associate Director
 National Environmental Policy Act Council on Environmental Quality
 730 Jackson Place NW
 Washington, DC 20503

Re: Docket No. CEQ-2019-0003: Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act

March 10, 2020

Dear Mr. Boling,

The National Association of State Foresters (NASF) is pleased to provide comments on the proposed rule changes for implementation of the National Environmental Policy Act (NEPA) which were published in the January 10, 2020 Federal Register.

NASF represents the heads of the forestry agencies for all fifty states, the District of Columbia, and the U.S. territories. Collectively, state and territorial foresters manage just under 76 million acres of state forest lands and work hand-in-hand with private forestland owners to promote forest health, resilience, and productivity on an additional 445 million acres. Our responsibilities have specific intersections with NEPA implementation. These include the influence of NEPA in federal land management and its nexus with delivering federal technical and financial assistance to private forestland owners.

Our organization advocates for a significant increase in the scope and scale of active management on federal lands in order to ensure their sustained contribution of economic, environmental and social benefits. Administrative requirements, such as NEPA processes, while serving an important function, divert financial and personnel resources away from on-the-ground management activities. Given that the Council on Environmental Quality's (CEQ's) NEPA implementation rules have not seen substantial change in over 40 years, we welcome efforts to update and streamline the requirements they place on federal agencies so more effort can be allocated towards the projects themselves. Federal agencies have issued over 30 NEPA guidance documents since NEPA was promulgated in 1978. Comprehensive revisions providing clarification of the regulations are long overdue.

Assisting private forest landowners in the management of their properties is a core mission of virtually all NASF members. Federal cost-share dollars available for these individuals to improve their lands come primarily through the programs of the USDA Natural Resources Conservation Service (NRCS). These programs operate under a programmatic Environmental Impact Statement (EIS). Often, staff from our member agencies prepare plans for private landowners which address environmental concerns and help them qualify for these funds only to have NRCS personnel duplicate this information in order to meet the requirements of their programmatic EIS. NEPA rule changes minimizing some of this duplication would ensure valuable time and resources are spent where they should be: getting more work done. Creating greater efficiencies, with changes such as this, still respect the purpose of NEPA and would be highly beneficial to our members, other agencies, and those landowners seeing delays due to duplicative processes.

Executive Director
 Jay Farrell

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NASF welcomes CEQ's effort to update and streamline NEPA review requirements for federal agencies. Doing so will help to ensure: (1) more, sorely needed resources for active management reach the ground in federal forests; and (2) duplication and delays in federal agencies' environmental review processes are minimized. Our comments on specific recommendations follow.

1500.1 Purpose and Policy – Re-emphasizing that NEPA is a procedural statute for environmental analysis and public input but does not mandate specific on-the-ground outcomes, will align the regulations with judicial precedent and clarify the basis for how legal challenges against major federal actions should proceed. This policy is reinforced in section **1501.6 Findings of No Significant Impact**, stating that if there is a Finding of No Significant Impact (FONSI) based on an agency mitigating the effects, then the agency must show where it has the authority and resources to conduct the mitigation.

1500.3 NEPA Compliance – Directing that agencies shall not impose additional procedures or requirements beyond what the law and CEQ rules stipulate (unless required by other statute) will encourage federal processes to be more efficient and focused. Requiring that legal challenges must be filed within 30 days following issuance of the final EIS and narrowing the ability to seek injunctions will reduce delays to critical federal projects, such as those that seek to reduce wildland fire risk on federal lands. Section **1501.6 Findings of No Significant Impact** also attempts to speed up the process by limiting public review to 30 days prior to the issuance of a final FONSI decision in most instances. We also support similar policy in **1503.4 Specificity of Comments and Information**, which states that comments not provided within 30 days of issuance of a draft EIS “shall be considered exhausted and forfeited.”

1500.4 Reducing Paperwork – In a number of places the proposed rule addresses the fact that NEPA documents can be voluminous, difficult to fully review, and expensive to prepare. Encouraging the use of Categorical Exclusions (CE) and Environmental Assessments (EA) where applicable and allowing joint document preparation by multiple federal, state, tribal, and local entities, plus other recommendations are welcome encouragements. For example, section **1501.5 EAs** limits the length to 75 pages, unless a senior official approves otherwise. Section **1502.7 Page Limits** requires that most EIS documents be less than 150 pages; it allows up to 300 pages for unusual scope or complexity and stating that anything greater must be approved in writing by a senior agency official. Sections **1506.3 Adoption** and **1506.4 Combining Documents** also include welcome language to reduce paperwork. Finally, we support the addition of language in **1502.11 EIS Cover** requiring the inclusion of the estimated cost of preparing an EIS to the cover of the document to provide transparency to the public on the costs of EIS-level NEPA reviews.

1501.10 Time Limits – NASF is supportive of establishing the proposed presumptive time limits for EAs at one year, and two years for EISs. Under the proposal, longer timeframes can be approved in writing when certain criteria are met, allowing for a degree of flexibility. CEQ has conducted reviews and prepared reports which document that agency processes for preparing EISs takes much longer than CEQ has advised, and documents are much larger than CEQ's recommendations. We agree with CEQ's assessment that “revisions to the CEQ regulations to advance more timely reviews and reduce unnecessary paperwork are warranted.”

1501.2 Apply NEPA Early in Process – This section states that agencies should start NEPA and involve all affected parties early in the planning process. NASF supports reasonable proposals to speed up implementation requirements. Also re-emphasized is the need to consider economic and technical factors, not just environmental. This reminder should encourage a more balanced approach to meeting NEPA objectives.

1501.4 Categorical Exclusions – The use of CEs is an effective strategy for reducing the costs associated with NEPA review and achieving time-sensitive environmental improvements. Such improvements include installing conservation practices on private forestland and reducing wildfire risk and improving wildlife habitat on federal forestland. NASF is supportive of the CEQ’s efforts to provide more clarity to agencies around decision-making of when to apply the use of a CE. Consolidating all of the direction for CEs into one section of the regulations and providing the procedures for evaluation of a proposed action for extraordinary circumstances will provide greater understanding and consistency of application.

1501.9 Scoping – NASF agrees that allowing agencies to begin the scoping process as soon as the proposed action is “sufficiently developed for meaningful agency consideration” would further streamline the NEPA process. Under current regulations, agencies conduct “pre-scoping” prior to the publication of a Notice of Intent (NOI). We agree clarification allowing scoping to occur prior to the publication of a NOI would obviate the need for agencies to engage in “pre-scoping” work.

1502.14 – Alternatives Including the Proposed Action – NASF is in strong support of requiring the inclusion of a “no action” alternative and allowing federal agencies greater discretion in considering alternatives. On federal lands, wildfire fuels reduction projects that are halted or delayed by legal challenges or unwieldy requirements can have deleterious environmental effects, ranging from habitat destruction to irreparable damage to drinking water sources. It is important for NEPA documents to show, and all parties who read them to understand, that there can be significant negative environmental consequences of “no action” as well as action.

1502.16 Environmental Consequences – NASF agrees that each NEPA review should carefully consider the possible conflicts between the proposed action and the objectives of state plans and policies. Each state’s forest management objectives and priorities are clearly defined in Forest Action Plans. Section **1506.2 Elimination of Duplication with State, Tribal and Local Procedures** builds on this concept: “[w]here an inconsistency exists, the [EIS] should describe the extent to which the [federal] agency would reconcile its proposed action with the [state] plan or law.” Given the lead role state forestry agencies play in delivering federal cost-share programs to private forestland owners, it is important that this directive also apply to the NRCS programmatic EIS requirement. Too often, state forestry agency staff prepare plans for private landowners to help them qualify for NRCS cost-share funds at the same time NRCS personnel are documenting how their program is meeting EIS requirements. This duplication of effort can be minimized with enhanced coordination and should be included in this regulation.

1508.1 Definitions – This section includes several changes in rule language definitions that NASF believes will improve NEPA implementation. These include narrowing the definition of “*Effects*” so that it no longer specifies that cumulative, direct or indirect effects must be analyzed. Rather agencies should review effects that are “reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternative.” NASF agrees with this proposed change as the NEPA statute refers to “environmental impacts” and “environmental effects” but does not subdivide the terms into “direct,” “indirect,” or “cumulative.” “*Reasonably Foreseeable*” is defined as something a person with ordinary prudence would consider in reaching a decision, and NASF supports this change in rule language definitions. The section also states that a “*Major Federal Action*” must have effects that may be significant and do not include non-federal projects that may have a small amount of federal dollar involvement, which we support. NASF also supports changing the term “*Commenting Agency*” to “*Participating Agency*” and pointing out that it can include State, Tribal, and local governments, signaling that federal agencies should work closely with these other authorities. NASF concurs with the value of describing “*Reasonable Alternatives*” as a “reasonable range of alternatives” in order to streamline documents and timelines.

NASF welcomes the proposed changes to allow for more flexibility in the use of modern technology and electronic means of communication throughout the NEPA process in publication, formatting, and filing of NEPA documents. This change would reduce paper work and streamline publication of documents while increasing public access to the information. We agree with the proposed changes to replace “circulate” and “circulation” with “publish” and “publication” throughout the proposed rule.

Again, thank you for this opportunity to comment. We appreciate the magnitude of this undertaking and the effort that has gone into this comprehensive revision. We hope our input proves useful to the process and would be pleased to provide any requested follow-up information.

Sincerely,

A handwritten signature in blue ink that reads "Gregory J. Josten". The signature is written in a cursive style with a long horizontal stroke at the end.

Greg Josten
NASF President
South Dakota State Forester