

March 10,2020

Council on Environmental Quality  
730 Jackson Place NW  
Washington, DC 20503

Comments on the Notice of Intent for Proposed Rule-making Council on Environmental Quality (CEQ)  
Update of Regulations for Implementing the Procedural Provisions  
of the National Environmental Policy Act (NEPA)

Submitted on behalf of the America Outdoors Association, Dubois Outfitters and Guides Association, Dude Ranchers Association, Grand Canyon River Outfitters Association, Idaho Outfitters and Guides Association, Kalmiopsis Guides Association, Middle Fork Outfitters Association, Montana Outfitters and Guides Association, Oregon Outfitters and Guides Association, Wild Rogue Outfitters Association, and Wyoming Outfitters and Guides Association.

Docket number: CEQ-2019-0003

RIN 0331-AA03

*Submitted via fax to: 202-456-6546*

To Whom it May Concern:

Thank you for the opportunity to comment on the proposed reform to Center for Environmental Quality (CEQ) regulations governing the National Environmental Policy Act. America Outdoors supports proposals to modernize National Environmental Policy Act (NEPA) compliance by revising and modernizing CEQ's NEPA regulations to facilitate more efficient, effective, and timely NEPA reviews by federal agencies.

An example of the need for reform of CEQ's NEPA regulations can be found in the challenge to the NEPA process by groups opposed to commercial stock-use by outfitters offering trips to the public in the Methow Valley, Chelan, and Tonasket Ranger Districts in Washington State. The process of issuing six permits to commercial outfitters who have been operating for years began in 2000, with scoping. Under threat of legal action by groups opposed to commercial outfitters, the Forest Service took 19 years to prepare a full Environmental Impact Statement (EIS) and a Supplemental EIS before reaching a decision to authorize outfitter permits to provide 6,082 service days in 10 areas. That use equals only 3.45% of overall recreational visits to the areas. The Forest Service estimates total visitor days for all users, including noncommercial visitors, to be 169,922 visits per year.

Any rational view of this activity would have to conclude that the impacts from the proposed authorized uses are minor compared to the potential impacts from other uses and are further offset by their benefits. Yet authorized uses are often isolated and analyzed without consideration of the impacts of

other uses and natural occurrences. Therefore, impacts not attributable to the proposed action are inappropriately and disproportionately ascribed to them.

The irony in this circumstance is that NEPA compliance has not been done to review the impacts of the other 163,900 service days in these areas since the last Forest plan was completed in 1991. This lack of documentation has never been challenged by the groups who are opposed to legitimate commercial recreational activities in National Forests. These misdirected actions subvert the NEPA process and its intended environmental protection.

NEPA, as currently configured, gives groups opportunities to impede agency action and to challenge uses simply because they oppose the nature of the use or the action, not because the use or activity presents significant impacts when compared with overall uses. In the case of the Methow Valley permits, the major impacts to the Forest are not the result of recreation or commercial stock use, but a succession of wildfires that have resulted, in some areas, with charred landscapes.

The Forest Service and Bureau of Land Management cost recovery regulations finalized after the Methow Valley process was initiated requires permit holders to bear the costs for these NEPA processes, which would ensure their elimination. The cost of NEPA documentation is not affordable by most small businesses operating under agency special use permits, another indication that these processes have mushroomed well beyond a reasonable scale and probably beyond the intended scope when the National Environmental Policy Act was signed into law. The Methow Valley case is but one example of the dysfunction; the potential for inappropriate manipulation and the gross inefficiency of current NEPA processes, which have the potential to be replicated in many areas, unless there is reform. Our comments are offered on the following section of the Notice of Intent.

#### **1500.1 Purpose and Policy and 1500.2**

We support the proposals in 1501.1 Purpose and Policy and the proposed changes to 1501.2 that provide the agency with some discretion regarding the implementation of NEPA analysis as it relates to actual decision-making.

#### **1500.3. NEPA Compliance.**

(a.) **Mandate.** We are generally supportive of the proposed regulation in this section and particularly supportive of the provision that these “regulations shall not impose additional procedures or requirements beyond those set forth in these regulations, except as otherwise provided by law or for agency efficiency.” The Forest Service, for example, has initiated scoping for every level of NEPA analysis whereas most federal agencies only include scoping for full Environmental Impact Statements. Scoping in the Forest Service would then be subject to CEQ guidance and regulations consistent with an EIS, so it would seem. The agencies may want to engage the public early in the NEPA process for Environmental Assessments or Categorical Exclusions and should have the ability to do that outside of the formal regulations governing scoping.

**(b). Exhaustion.** AO supports the changes to this section which require, that “For consideration by the lead and cooperating agencies, comments must be submitted within the comment periods provided and shall be as specific as possible (§§1503.1 and 1503.3). Comments or objections not submitted shall be deemed unexhausted and forfeited.”

#### **1500.4 Reducing paperwork.**

We support the proposals to reduce paperwork in this section particularly the proposals to reduce paperwork by using categorical exclusions and findings of no significant impact where appropriate. We support the proposals in 1501.5 (e.) to limit EAs to 75 pages and in 1502.7 to limit an EIS to 300 pages with exceptions as noted.

#### **1500.5. Reducing delay.**

We support the proposal to reduce delays by the use of more categorical exclusions where the impacts are not significant.

### **PART 1501—NEPA AND AGENCY PLANNING**

#### **1501.3 Determining the appropriate level of NEPA review.**

For site-specific, project level NEPA compliance, the agencies should have the discretion to determine if the effects of the proposed action are not likely to be significant if they are minor or fractional when compared to similar and more significant uses as well as naturally occurring impacts. We point to the comments in our overview to provide context to this suggestion.

#### **1501.4 Categorical exclusions.**

The proposed regulation should acknowledge that in situations like the example in our overview where the use is minor in comparison to other potential impacts, the uses authorized by the proposed action are not likely to be significant and therefore should be eligible for categorical exclusions. Aside from mitigation, the benefits of the services and contributed maintenance, such as donated trail work by outfitters under special use authorizations, offset impacts and further diminish the significance of those impacts. The rule should further clarify that these benefits from the proposed action further qualify them for categorical exclusions even in the presence of extraordinary circumstances.

We are concerned about circumstances in which similar agencies, such as the Bureau of Land Management and the USDA Forest Service have different categorical exclusions for the same actions and activities. The BLM, for example, prohibits the use of categorical exclusions for commercial boating permits issued for outfitter operations on Wild and Scenic Rivers. While a Wild and Scenic River designation is an extraordinary circumstance, the Forest Service does not specifically prohibit the use of a categorical exclusion for special use permits on those rivers. These agencies should be consistent and the CEQ guidance should require that the agencies adopt a consistent categorical exclusion.

The BLM prohibition on the use of categorical exclusions on Wild and Scenic Rivers can be found in the Department of Interior list of Categorical Exclusions. *H. Recreation Management. Issuance of Special Recreation Permits for day use or overnight use up to 14 consecutive nights; that impacts no more than 3 staging area acres; and/or for recreational travel along roads, trails, or in areas authorized in a land use plan. This CX cannot be used for commercial boating permits along Wild and Scenic Rivers. This CX cannot be used for the establishment or issuance of Special Recreation Permits for "Special Area" management (43 CFR 2932.5) (Federal Register / Vol. 72, No. 156 / Tuesday, August 14, 2007 / Notices).*

#### **1501.6 Findings of no significant impact.**

It would appear logical to publish the finding of no significant impact with or as part of an environmental assessment when an EA is the appropriate NEPA analysis. (c) The finding of no significant impact should include in addition to mitigation any significant benefits of the proposed action, which should also contribute to the finding of no significant impact.

#### **1501.7 Lead agency.**

In the preparation of an environmental impact statement we assert that (c) "magnitude" should include a clarification that when a planning or project level analysis involves federal lands, the agency whose lands are most prominently involved with the action or covered by the analysis, should be the lead agency.

#### **1501.9 Scoping.**

We ask whether input on the inclusion of programmatic analysis should be included in the scoping process.

#### **1501.10 Time limits**

We support the time limits in 1501.10 which are 1 year for an EA and 2 years for an EIS.

#### **1501.11 Tiering**

We support the inclusion of programmatic analyses in the preparation of an EIS or an EA to facilitate future documentation requirements for site specific or project level decisions. Programmatic documentation should be developed so that it is sufficient to limit future NEPA documentation to the potential impacts from changes to the authorized activities or subsequent alterations in resource conditions.

#### **1502.5 Timing**

We suggest adding a provision that allows for the continuation of an activity that has been previously authorized for which the term has expired, but for which no NEPA documentation has been accomplished or finalized by the agency. For example, if the holder of a long-term special recreation

permit makes a timely and sufficient request for renewal of a long-term special recreation permit, the expiration of the permit shall be tolled in accordance following section 558(c)(2) of title 5, United States Code, until such time as the request for renewal has been finally reviewed and determined by the Secretary concerned.

### **1502.7 Page limits**

As previously indicated, America Outdoors generally supports the page limits with the potential exceptions proposed in this section.

### **1502.16 Environmental consequences.**

We recommend adding a discussion of the benefits that are in addition to the economic benefits of a proposed action, such as the public service and general societal benefits of a special use authorization for use of public lands. While the addition of these benefits need not be lengthy, the agency should have the authority to exceed the set page limits if necessary, to accommodate these values and benefits.

### **1503.1 Requesting comments.**

One of the challenges and shortfalls of NEPA is that it has ballooned beyond the capability of the average citizen to participate, and in some cases by those who are directly affected by the proposed action. The length of the documents and the complex nature of the processes and the analyses are among the reasons that NEPA processes currently favor organizations with legal representation. As a result, those stakeholders' influence in the process has grown unfairly and disproportionately, subsequently leading to disenfranchisement. We are making suggestions to improve participation in the process in 1506.6.

### **1506.1b Limitations on actions during the NEPA process.**

While there may be other regulations or sections that cover the continuation of previously authorized uses, such as permitted activities, there is no direction in this section to cover circumstances in which the agency has not completed its NEPA analyses prior to expiration of a permit that is eligible for renewal but for which NEPA documentation is required. We refer to our comments in **1502.5**.

### **1506.3 Adoption**

We support direction which authorizes agencies to adopt other agencies' categorical exclusions, environmental assessments, and environmental impact statements where the adopting agency's proposed action is substantially the same. Please see the discussion of this issue in 1501.4.

### **1506.6 Public comments**

In addition to the notifications required by this section, permit holders who have a direct stake in the planning and project level analyses of the proposed action should be contacted directly and in writing by

mail or electronic communication regarding the proposed action. They should be specifically informed about participation in the NEPA process, such as the opportunities to comment or object (including objections that may be made in support of a proposal in order to qualify for an objection process). The communication should explain how to submit a valid comment as described in 1503.3, for example. While all the processes may not be within the scope of NEPA per se, the notification should explain the overall process, such as a Forest plan revision, and the role of NEPA documentation in that specific process.

**Conclusion**

Thank you for providing the public with an adequate comment period to review and respond to the proposed rule. Implementation of these provisions would be very helpful to the outdoor industry. We the undersigned thank you for your time.

Sincerely,

Aaron Bannon  
America Outdoors Association

Taylor Engum  
Dubois Outfitters and Guides Association

Bryce Street  
Dude Ranchers Association

John Dillon  
Grand Canyon River Outfitters Association

Aaron Lieberman  
Idaho Outfitters and Guides Association

Zach Collier  
Kalmiopsis Guides Association  
Wild Rogue Outfitters Association

Grant Simonds  
Middle Fork Outfitters Association

Mac Minard  
Montana Outfitters and Guides Association

Bryan Sykes  
Oregon Outfitters and Guides Association

Sy Gilliland  
Wyoming Outfitters and Guides Association