



NATIONAL ASSOCIATION OF STATE FORESTERS

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September 29, 2023

Amy B. Coyle
Deputy General Counsel
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

Docket Number: CEQ–2023–0003; Document Citation: 88 FR 49924

Dear Deputy General Counsel Coyle,

The National Association State Foresters (NASF) is pleased to provide comments on the Council of Environmental Quality’s (CEQ) proposed “*Bipartisan Permitting Reform Implementation Rule*” to revise its regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA), including to implement the Fiscal Responsibility Act’s amendments to NEPA published in the July 31, 2023 Federal Register.

NASF represents the directors of the forestry agencies in all 50 states, five U.S. territories, three nations in compacts of free association with the U.S., and the District of Columbia. Our members assist in the management and protection of state and privately-owned forests and are frequent cooperators in the management and protection of federal-owned lands.

Recognizing the importance of forest management on federal lands, NASF in 2020 formally adopted a position paper titled “Recommendations to Improve the Health and Sustainability of Federal Forest Resources.” One of the desired reforms listed in the paper is quoted below:

“Implement NEPA in ways that are more productive by (1) utilizing landscape scale planning, (2) developing desired condition documents with smaller scale projects meeting CE requirements tiered to those documents, or (3) implementing other strategies which produce more on-the-ground results.”

NASF advocates for a significant increase in the scope and scale of active forest 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, have the potential of unnecessarily diverting excessive financial and personnel resources away from on-the-ground management activities. We welcome efforts to update and streamline

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the requirements they place on federal agencies so more effort can be allocated towards implementing forest management projects. As such, federal agencies should consider Congressional intent within the *Fiscal Responsibility Act* to facilitate more efficient NEPA analysis when developing this proposed rule.

In March of 2020 NASF provided comments to Docket No. CEQ-2019-0003: *Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act*. Throughout these comments, we will reference them as our 2020 comments. Our Comments on specific recommendations are as follows:

1500.1 Purpose: In 2020 NASF commented that re-emphasizing NEPA is a procedural statute for environmental analysis and public input and does not mandate specific on-the-ground outcomes, aligns the regulations with judicial precedent and clarifies the basis for legal challenges. We are concerned the proposed language creates ambiguity regarding this. We do support the language stating that environmental documents “must concentrate on issues that are truly relevant” and that NEPA’s purpose is not to generate paperwork. We have seen too many projects designed to increase forest health and protect communities from catastrophic wildfire needlessly delayed by federal agencies encyclopedic analysis of irrelevant issues.

1500.2 Policy: We support all efforts and guidance to integrate the NEPA process with other procedures and make the process more meaningful to decision makers and the public. We believe the best way to do this is to streamline the process and paperwork as much as possible. We are concerned that using the language of 1500.2(f) would create an unquantifiable standard by which no project, NEPA process, or environmental document could be judged.

1500.4 Concise and informative environmental documents, and 1500.5 Efficient process: Categorical Exclusions (CE) and focused environmental assessments with findings of no significant impact are oftentimes the best way to provide the decisionmaker and the public analytical, concise, and informative environmental documents. We appreciate the language in 1500.5 to use these tools as part of an efficient process but believe this needs to be strengthened to ensure agencies maximize the use of CE’s and Environmental Analysis’ (EA) instead of defaulting to Environmental Impact Statement’s (EIS). *NASF supports adhering to the clear deadlines, page limits and directives regarding environmental reviews in the Fiscal Responsibility Act; 150-page limits for an EIS (300 pages if the project is of extraordinary complexity) and 75-page limits for an EA. NASF also supports the goals of the Fiscal Responsibility Act in setting time limits of one year for an EA and two years for an EIS and providing a right of action to project applicants if the agency does not adhere to these deadlines.*

1501.3 Determine the appropriate level of NEPA review: In managing the nation’s public lands federal land management agencies need assurance that decisions made under the NEPA will not

preclude additional needed work in nearby areas or on the same piece of land in the future. NASF recommends inserting language stating that multiple project specific NEPA Decisions, Findings of No Significant Impacts and/or Categorical Exclusions that are tiered to a Land and Resource Management plan and the programmatic NEPA Decision which the plan falls under are not in effect a single proposed action. Congress specifically creates NEPA CE categories to incentivize their use, to expedite action, but we don't believe Congressional intent is that CE's can only be used once in a any geographic area. Codifying the United States Department of Agriculture's (USDA) Forest Service and Department of Interior's Bureau of Land Management's ability to execute CEs to maximum acreage under current law within reasonable adjacency to other distinct (but same category) CE planning areas/actions would unleash the tool as it was intended. By allowing for the use of multiple CEs to be applied as separate segments of a larger proposed action by the Forest Service to address several types of land management activities will allow for fuels treatments and other forest management actions at the scale necessary to address the problems we face with our national forests.

1502.14 (f) Alternatives including the proposed action: NASF members work to ensure the health and resilience of the Nation's forests and that they provide the most possible social, economic and environmental benefits, which is best achieved through active management. Only by accelerating the scope, scale, and pace of federal forest management (consistent with the approved management plans for each national forest), will we be able to restore these lands to a more sustainable and resilient condition to effectively mitigate climate change and address the forest health and wildfire crisis. Ecosystems and the analysis of projects within them are complex; an action may benefit some resources and have negative impacts on others, making the selection of environmentally preferable alternative subjective and difficult to defend. To avoid needless delays and expensive litigation we recommend you remove this unnecessary requirement from the proposed rule.

1502.16 Environmental consequences: NASF is in strong support of ensuring the option to only use two project alternatives – “Action” and “No Action” – in an Environmental Assessment (EA) is used effectively to create greater efficiency and better decision-making and supports federal agencies review of reasonably foreseeable environmental effects that have a reasonably close causal relationship to the proposed action or alternative. “*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. 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.

1505.2 Record of Decision in cases requiring environmental impact statements: As stated in 1502.14, NASF is concerned that declaring environmentally preferred alternative is subjective and will lead to needless expense and delays.

1507.3 Agency NEPA procedures. NASF believes it is in the best interest of the public to streamline and expedite the NEPA process as much as possible while still allowing for adequate public comment and collaboration when appropriate. Integrating scoping with the environmental assessment process can be an inclusive way to solicit input and save time and money during the NEPA process. It should not be removed. Many federal agencies have similar or overlapping missions and purposes. It makes sense that agencies be allowed to use a CE listed in another agencies NEPA procedures and recommend this not be removed.

1508 Definitions. NASF agrees that “*Major Federal Actions*” as defined in this proposed rule should not include, “*Non-Federal actions; With no or minimal Federal funding; With no or minimal Federal involvement where the Federal agency cannot control the outcome of the project; Loans, loan guarantees, or other forms of financial assistance where a Federal agency does not exercise sufficient control and responsibility over the subsequent use of such financial assistance or the effects of the action*”. NASF believes 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.

Thank you for the opportunity to share our perspectives. We are pleased to answer any questions and would welcome any follow-up communications.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kacey KC', with a long horizontal flourish extending to the right.

Kacey KC
NASF President
Nevada State Forester