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[CEQ–2019–0003] RIN 0331–AA03

Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act

AGENCY: Council on Environmental Quality.
ACTION: Notice of proposed rulemaking

Comments Submitted by the National Association of Forest Service Retirees (NAFSR) and the Public Lands Foundation (PLF)

The National Association of Forest Service Retirees (NAFSR) is a national nonprofit membership organization that represents thousands of US Department of Agriculture (USDA) Forest Service retirees who are dedicated to: sustaining the heritage of caring for the National Forests and Grasslands, partnering with the Forest Service (FS), and helping understand and adapt to today's and tomorrow's challenges.

The Public Lands Foundation (PLF) is a national nonprofit membership organization that advocates and works for the retention of America's Public Lands in public hands, professionally and sustainably managed for responsible use and enjoyment by American citizens. The PLF endorses and embraces the multiple use mission of the US Department of the Interior (DOI) Bureau of Land Management (BLM). Members are predominately retired BLM employees from across the United States.

The NAFSR's and PLF's (hereby referred to as Organizations) members represent a full spectrum of resource staff and line management, and research professionals working across the United States. Since the inception of the NEPA and throughout their careers, members actively implemented the existing NEPA Regulations for a vast variety of agency actions on 436 million acres of public lands administered by the FS and the BLM. Members participated in agencies actions that required all levels of environmental reviews from the Environmental Impact Statement and Environmental Assessments to Categorical Exclusions. Members also have substantial experience creating agency NEPA regulations. The Organizations' feedback is based on hundreds of years of combined experience implementing NEPA Regulations, and agency NEPA regulations and policy at the local, regional and headquarters levels. The Organizations' members experience include working with Cooperating and partnering agencies, stakeholders and the public to meet the intent and requirements of the NEPA.

The Organizations appreciate the opportunity to provide comments and suggestions regarding proposed changes to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act. Based on members' professional experience, the Organizations submit the following substantive comments, concerns and suggestions to Council on Environmental Quality (CEQ) for consideration and incorporation in the final rule regarding Docket Number CEQ-2019-0003.

The CEQ's effort to update the NEPA Implementing Regulations after four decades of passage of the NEPA legislation is to be commended. Our Organizations found things in the new regulations we support and those we do not support. Furthermore, our organizations encourage the CEQ to developed a strong roll-out strategy, litigation and regulatory amendment strategy; and start-up training to key agencies and practitioners to facilitate successful implementation of the NEPA final rule. Our specific comments that follow, in more detail, will first be directed at the proposed changes where we have major concerns. We then submit specific comments on proposed changes we support. Throughout the document, we also provide suggested language to assist the CEQ in final regulation preparation.

Our category of major concerns discusses proposed changes to Cumulative Effects and Significance, Reasonable, Thresholds and Added Administrative Requirements. We are concerned that some of the proposed changes, such as eliminating cumulative effects analysis, maybe viewed as "overreaching" and result in unforeseen and unintended consequences, becoming counterproductive and overshadow the entire regulatory effort, both judicially and politically. As result of potential unforeseen and unintended consequences, future administrations or Congress may react with additional laws/regulations burdensome to the agencies. Our specific concerns are highlighted in the next section.

Following the concerns presented, the Organizations describe areas of proposed change support. These include several proposed changes to Categorical Exclusions, Tiering and Adoption of others environmental reviews, clarification of Cooperating and participating agency functions, improvements to the section on Finding of No Significant Impact (FONSI)s. We support modernizing to bring the Regulations up to date with current and future technologies, simplifying procedural requirements, clarifying the terms and scope of the NEPA, and enhancing coordination with states, tribes, and localities.

Areas of Concern

The Organizations provide the following specific concerns and request changes based on this input be made as the Proposed Regulations are finalized. We see these as critical changes to meet the purpose of this proposed Regulation update to streamline the implementation of the NEPA process for improved and timely decision making.

Cumulative Effects: Formerly Sec.1508.7*:* Proposed Regulation Page 1729, 1508.1(g)(2)

The Organizations strongly object to the elimination of cumulative effects. This seems to be an extraordinary and unnecessary step as it misconstrues NEPA primary analysis needed for determination of doing an EIS and EIS analysis content. In doing so, it eliminates a key component of determining impact significance, which is a critical purpose of NEPA. "Cumulative impact" (formerly Sec. 1508.7) is an essential definition and its regulation places blinders on the ability to adequately disclose impacts to properly inform decision making, thus violating the very statute these rules are intended to help implement.

While the organizations support the added language in the preamble that clearly defines the definition of "effects"; and page 1720,1502.16(a)(10) and (b*)* as being reasonably foreseeable and requiring a reasonably close causal relationship to the proposed action. This requirement is not intended to limit analysis to only those effects reasonably caused by the action. Further clarifying the intent of NEPA is to take a look at present effects of past and other present actions, as well as effects of reasonably foreseeable actions that are, in the judgment of the agency, relevant and useful because they have a significant cause-and-effect relationship with the proposal. The Proposed NEPA regulations, however, do not require agencies to catalogue or create an exhaustive list and analyze all individual past actions. The Proposal goes on to clarify that there must be an inter-related environmental effect of the proposed action to require NEPA. We support the idea of the NEPA, and an effects analysis based on a causal relationship and whether "an effect" is caused by the proposed action. The regulations should be clear that, once established that an action reasonably causes an effect on a resource, then further analysis of other past, present, and reasonably foreseeable effects on that same resource is warranted.

Understanding and recognizing this, Section 1508.1(g) needs to clarify, as stated above, that it does not limit analysis of all reasonable effects to only those that "have a reasonably close causal relationship to the proposed action or alternatives." This provision, based on the doctrine of "proximate cause" from tort law, ensures that there is a reasonable probability that a proposal will affect a resource of concern before undertaking analysis of other effects on that same resource. Consideration of "other effects on that same resource," regardless of who causes them or agency authority to control them, is absolutely essential to determining whether the incremental (direct and indirect) effects of the proposal and alternatives reach the level of significance (e.g., whether a seemingly innocuous action, when considered together with other past, present, and reasonably foreseeable actions, may remove "the last of a kind" or "be the straw that breaks the camel's back"). Adding such clarification to this definition will preserve the important context necessary to determine impact significance which, as a crucial component of NEPA, deserves a specific definition.

Additionally, the statement that "a 'but for' causal relationship is insufficient to make an agency responsible for a particular effect under NEPA" is unsupported by rationale and understanding of the definition of "but for" causation. If a project will not occur "but for" an enabling action by a Federal agency, then the entirety of the effects of the project are, by definition, the responsibility of the agency. For example, the effects of a wind energy project on private land would not, by themselves, be the responsibility of a Federal agency. But if the project would not be constructed (and its effects would not accrue) "but for" agency granting of a right-of-way to transmit the energy to essential markets, then the agency action is the proximate cause of the project's impacts. Artificially ignoring the total project effects that would not occur without agency action would again violate the significant impact determination requirement of NEPA.

The Organizations emphasize the importance of the CEQ to not eliminate cumulative effects requirement from in the Final Regulations and to provide for clarifications as stated above. When the CEQ Regulations were initially promulgated in 1978, they represented an attempt both to implement the NEPA statute and to capture the first years of judicial interpretation. Thus, a combination of the initial understanding of the meaning of NEPA and its earliest judicial

interpretation supported cumulative effects analysis. The legislative history of the NEPA shows the cumulative nature of impacts on the environment was a substantial factor in its passage. The US Courts throughout the Country over the past 40 years have rendered decisions dependent on the existing CEQ Regulations requiring cumulative effects analysis. Such a substantial amount of case law interpreting the statute cannot be easily erased by a change in regulation.

The NEPA may have been initially motivated by the need to assess large scale projects, however with the development of scientific knowledge since 1970 along with the proliferation of available data has resulted in the agencies' abilities to monitor a wide range of environmental values from water and air quality to species viability. As the scientific community better understood resource dynamics, it became increasingly possible to trace impacts by incremental analysis or cumulative impacts. All this has been incorporated into the current NEPA Regulations and agency specific regulation and guidance, and associated court decisions since 1978. Our members spent careers studying and managing natural resources for their ecological, cultural, economic, and social benefits. All of these are highly dependent on understanding beneficial and adverse cumulative effects.

Public debate on environmental issues center on cumulative impacts. Cumulative impact analysis is undeniable and central to the measure of environmental quality. In the public's mind there exists a clear understanding that individual actions can create cumulative significant effects. In this context, any attempt to remove cumulative effects analysis from consideration will be met by justifiable ridicule and opposition by members of Congress, interest groups and the public at large. We firmly believe ignoring cumulative effects would be contrary to simple logic and case law and will doom the entire regulatory effort, both judicially and politically. We believe this to be an overreach that will have unintended consequences and will hamper the overall streamlining effort.

Significant: 1501.3

Removing the definition of "Significantly" (formerly Section 1508.27 "Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment") along with the elimination of cumulative effects seems again to be an unnecessary and extraordinary change under the proposed rule. The Act specifically requires an EIS for Major Federal Actions significantly affecting the quality of the human environment. We believe that it is critically important that the Proposed Regulations, provide practical and reasonable guidance as to the definition of Significant.

The Organizations request that the CEQ provide some criteria for "significantly" because the term is key for implementing NEPA. We believe that it is important that the proposed Regulations, provide practical and reasonable guidance as to the definition of Significant. NEPA documentation turns on this term – establishing categorical exclusions, findings of no significant impact for environmental assessments, and determining whether to prepare an environmental impact statement. The courts defer to agency findings and decisions if they are reasonable and not arbitrary. The current CEQ regulations define "significantly," providing criteria for logical conclusions. The proposed regulations have a shortened set of criteria that should be moved from 1501.3 back to a definition for "significantly" along with some additional suggested wording.

Moving the term back to a definition section will focus attention to this important statutory word. References to the definition can be maintained in 1501.3. In addition, some further considerations are offered for the CEQ to add to the proposed definitions:

Significantly: Significance depends on the potentially affected environment and degree of the effects of the action.

> (1) In considering the potentially significantly affected environment, agencies may consider, as appropriate, the affected area (national, regional, or local). Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the Nation as a whole. Both short- and long-term effects are relevant. The determination of "significantly" should focus on reasonable and foreseeable significant effects having a close causal relationship to the proposed action.

NEPA threshold applicability analysis: Page 1714, 1501.1(a)(1) and
NEPA compliance: 1712 1500.3(a)

The Organizations request that Page 1714, 1501(a) be revised and clarified. At a minimum, the statement in 1501.1(a)(1), as written, incorrectly implies that actions that are not "major Federal actions" are not subject to the NEPA. This wording needs to be clarified prior to issuance of the Final Regulation.

The Organizations request Sub-Sections 1501.1(a) (3-5) be revised. The Organizations recommend two possible solutions. First, we suggest keeping the current regulations, modifying slightly and listing them together as the Thresholds. These are inclusive and responsive to case law. The first three criteria are based on current CEQ regulations. Then we propose adding a fourth criterion. Suggested language for the final regulation is:

> "A proposal is subject to the NEPA requirements when all of the following apply:
> (1) The agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated (see 40 CFR 1508.23).
> (2) The proposed action is subject to Federal control and responsibility (see 40 CFR 1508.18).
> (3) The proposed action would cause effects on the natural and physical environment and the relationship of people with that environment (40 CFR 1508.14) that can be meaningfully evaluated (40 CFR 1508.23); and
> (4) The proposed action is not statutorily exempt from the requirements of section 102(2)(C) of the NEPA (42 USC 4332(2)(C))."

If the CEQ does not accept the above suggested revision and carries through with the proposed Sub-Sections 1501.1(a)(3-5), these should be revised to either combine or simplify the language and to provide examples such as when an environmental review is covered by another statute such as CERCLA or specific direction is given by Congress for a land transfer free and simple with no further agency action allowed. This section, and also in Major Federal Action –Page 1729, 1508.1 Definitions (q)(1) we do not support defining "major" and "non-major" actions as threshold considerations for NEPA compliance. The focus for NEPA's intent and policy is on

significant environmental effects, not on the size of Federal actions. If the focus is going to be on major and non-major actions, why are environmental assessments focused on significance vs. "non-major"? If CEQ wants to move to focusing on actions, they will need to define what that means and will need additional clarification of Major Federal Action. Adding examples may assist in the understanding and implementation of the Thresholds.

Five New Proposed Administrative Requirements Require Removal or Revision

The Organizations have 5 main concerns with new Proposed Regulation language to add regulatory mandates to the agencies as they strive to implement the finalized Regulations. The first and major concern is the new mandate for Environmental Impact Statements (EIS) to request and then summarize and certify the accounting of all alternatives, information and analysis proposed in several places throughout the Proposed Regulations from Notice of Intent (NOI) through Environmental Impact Statement (EIS) requirements.

Exhaustion: Page 1713, 1500.3(b)(1); Page 1720, 1502.1.17 and .18; Page 1722 1503.1(a)(3); Page 1722, 1500.3(b)(1) and (2) Page 1722, 1503(b)

These new mandates should be deleted throughout the Proposed Regulations prior to finalization. As written, the new requirement appears to be in direct contradiction to the CEQ stated purpose to streamline NEPA. The requirement that Agencies shall request a new, additional 30-day comment period should be deleted. In addition, without a clearer definition of what "certify" or "summarize" looks like it appears that the CEQ has opened the door to future challenges, questions and uncertainty around what is required to meet this objective. Under this new requirement there is the potential to create major uncertainty for agencies and the public as what depth in analysis and review is appropriately untaken by the agency, regardless of its relevance. Experience has shown us while information and alternatives submitted by interest groups, governmental bodies and individuals can be helpful and informative it can also be a vehicle used to overburden the environmental review process. Adding this new requirement without a fuller consideration of definitions and clarity of the process will unnecessarily duplicate current practice in many agencies to discuss Issues and Alternatives Considered but Not Analyzed in Detail and will greatly impact the agencies efforts to meet the 2 year or less time frame. These additions are contrary to the stated purpose of streamlining implementation of NEPA and must be removed or wording revised for clarity and intent.

In addition, the new requirement 1500.3(b)(2) as stated information is to be presented in a summary in the EIS which will lengthen the number of pages needed. Page 1720, 1502.17 "shall invite comment on the completeness of the summary… and the Page 1722, 1503.1(a)(3) requirement and also 1503.1(b) may invite comments on FEIS prior to final decision – 30 days, seem to provide contradictory direction. Some of the Proposed Regulation languages says "shall" and in others says "may". As written the new direction appears to be over burdensome and counter-productive to streamlining the process and to write concise documentation. These new requirements should be deleted throughout all sections of the proposed rule prior to issuance of the Final Regulation.

The next 3 major concerns and suggested revisions regarding new administrative requirements follow. We are concerned that proposed changes codifying into regulation requirements on page limits, time limits, cost estimate information and Senior Agency Official designation will result in unintended consequences slowing the environmental review process, adding complications and pushing exceptions to the requirements to officials at the Assistant Secretary level of all agencies since these requirements are set vs. suggested in regulations. We believe these limits are better addressed through agency policy to provide agency flexibility to address environmental review as needed to address case by case for proposed agency actions. Codifying these presumptive limits, designating a senior agency official and displaying NEPA cost as regulation gives them the force of law for all government agencies and locks in requirements with little future flexibility. We strongly urge CEQ to simplify the regulations and not add these administrative burdens to the Final Regulations.

EIS and EA Time and Page Limits, and Senior Official Designation: Page 1715, 1501.5(e); Page 1717, 1501.7(d); Page 1716, 1501.8(b)(6) and (c); Page 1717, 1501.10; Page 1718, 1502.5; Page 1718, 1502.7; and Page 1730, 1508.1(dd)

Many of our members have spent their professional careers as NEPA practitioners and decision-makers and have a long history of working with environmental documents and the Federal Courts. We appreciate how onerous and protracted the NEPA process and the environmental documents have become. While supporting an approach to limit pages and timing to encourage brevity and clarity, we do not support including these in the rule. Leaving these presumptive requirements in regulations could potentially result in future judicial reviews to question if an agency decision was arbitrary in determining the adequacy of a 20-page EA vs 75-page EA, especially where the CEQ currently expects EAs to be "concise," "brief", and 10-15 pages. The assumption of equivalent page length equals effective disclosure of potential impacts as a legal criterion of adequacy could potentially lead the court to find multiple faults, and more alleged violations of NEPA. Setting timeframes for analysis and prescribing universal time limits seems unwise and a distraction from promoting focused and quality content. These presumptive time and page limits for completing environmental documents are better placed in policy than under the rule of law in regulation. The Organizations strongly recommend that the mandated administrative requirement be removed from the Regulations or keep existing Regulation language of "shall normally" instead of the proposed "shall" to identify CEQ suggested limits on pages and timeframes for EISs and EAs. In addition, 1501.10(f) – should be deleted as CEQ will either suggest "shall normally" or direct "shall" meet certain time limits in the final regulation so the Sub-Section (f) doesn't make sense.

Senior Agency Official: Page 1717, 1501.10 (various)

Related to the requested changes to regulatory setting of pages or time limits, the Organizations request that the Senior Agency Official not be designated in a regulatory requirement. This is our fourth administrative requirement that we request be deleted or revised. The requirement for a "Senior Official" should be removed from the rule. If the CEQ and agencies want to establish such positions, they should do so in policy or memorandums of understanding. If the CEQ carries forward with this requirement, the Senior Agency Official definition should be expanded to be identified by each agency to include senior executive service (SES), for example SES

designates such as Regional Foresters and State Directors, closer to the ground affected by the decisions. Designation as close to the public affected by the decision would seem to be comparable to the stated purpose of moving BLM decision makers closer to the ground and outside of Washington, DC. To our knowledge all Agency Assistant Secretaries are stationed in Washington, DC.

The USDA FS and DOI BLM directly work in partnerships with rural communities across the country and prepare more environmental documents annually than any other agencies. Delays and accountability to these communities directly affect their livelihoods and future sustainability. This proposed new requirement for a "senior agency official" at the Assistant Secretary level goes directly counter to the Presidential initiative to streamline government, increase efficiencies and reduce costs. Identifying a "senior agency official" in policy vs. regulation and including SES would further meet the CEQ's NEPA reform goals to reduce unnecessary burdens and delays, while ensuring a more direct streamlined process for review and help reduce direct implementation costs.

Environmental Review Cost Requirement: Page 1720, 1502.11(g)

Our fifth and final administrative requirement concern is the new requirement to add an EIS cost estimate to the cover page. The Organizations strongly request that CEQ remove the requirement to identify the estimated cost of preparing the EIS. This unreasonably time consuming and inherently inexact calculation requirement (particularly for combined documents) has absolutely no bearing on NEPA's "informed decision making" purpose. The only presumable intent behind such an onerous requirement for information entirely unrelated to environmental consequences would be to prejudice readers against the very procedures these regulations are intended to help implement. Further, estimating costs for integrated reviews, which combine the environmental review required by multiple statutes into one review document, makes this an exercise in futility. It is highly improbable that accurate cost estimates for individual environmental review and analysis for items covered under the umbrella NEPA review document could be parsed for NEPA specific, ESA specific, Clean Air Act Specific, etc. This adds an undue burden on all Federal Agencies and participating agencies and does not add value to the final decision issued by the Agency Decision Maker. This new requirement would be an added burden and outside the intent of NEPA. While understanding the need to control costs and to be transparent this new requirement under the rule has absolutely no bearing on NEPA's "informed decision making" purpose. This requirement will not meet CEQ's stated goals to simplify and accelerate the NEPA review process. The USDA Forest Service and DOI BLM currently account for the largest volume of workload within the NEPA arena. The USDA Forest Service would need to create a dual track budgeting allocation and accounting process currently outside of the agency's current national budgeting processes. The new cost tracking requirement results in little benefit to conducting NEPA reviews, falls outside of the intent of the act, and creates unnecessary burdens and costs for the agencies. The CEQ should remove this proposed requirement.

Simplifying the Proposed NEPA Regulation requirements and not adding the five administrative requirements to the Final Regulation should be an important CEQ governmental-wide objective. We strongly suggest the CEQ undertake a critical review of these new proposed requirements as

to what should be required as added value to regulations without adding administrative burden that does not meet the intent to streamline the process and inform decisions.

Environmental Impact Statements (EIS) and Environmental Assessments (EA): Page 1719, 1502.10; and EAs Page 1715, 1501.5

The Organizations urge the CEQ to simplify the NEPA procedures requirements in the proposed EIS format regulations. Specifically, the 1502.10 recommended format for an EIS has more requirements than the statute requires. Although some associated content may be deemed relevant to an environmental analysis, there is no need to specifically require a "cover"; "summary"; "table of contents"' "purpose and need"; "affected environment"; "submitted, alternatives, information, and analyses"; and "list of preparers" (new proposed requirement). All these sections should be optional (suggestive) vs. requirements. This would do more to cut down on document bulk and assist agencies in using functional equivalent documents for EISs when preparing rules and plans. Each subsequent section contains further requirements. For example, something as simple as a cover is highly regulated - "shall not exceed one page and include:" Many requirements are included just for a cover, including an "abstract" and an "estimated total cost of preparing the environmental impact statement".

While the Organizations support proposed changes in 1501.5, the CEQ Final Regulation should better define and clarify requirements of EAs vs EIS. The outline for EAs should be simple and straight forward. Normally, EAs should describe the proposed action along with its environmental effects and then conclude whether the environmental effects are "significant" under NEPA requiring either a FONSI or EIS. Unlike EISs, the requirement for any further details and analysis, such as alternatives and a description of the environmental impacts, should be limited to 1 of the 2 following situations:
Alternatives are required to mitigate the adverse environmental effects of the proposed action to a point that they are something less than "significant" and would not require an EIS.
There are "unresolved conflicts concerning alternative uses of available resources" as required by section 102(2)(E). Normally, any conflicts involving the use of land or resources should be dealt with in either the EAs description of the proposed action and related environmental effects or in a tiered document dealing with overall land use. Any unresolved conflicts not addressed in the EA may be dealt with by developing additional alternatives. A more concise description placed in the pre-amble and in the Final Regulation should clarify requirements and intent for EISs vs EAs and required analysis and documentation.

Remedies Violations of NEPA: Page 1713, 1500.3(d)

The Organizations believe this section needs further clarification regarding the potential for the violations of the NEPA in cases where a decision maker is not adequately informed of environmental consequences among a reasonable range of alternatives. We believe in some case it could be a valid basis for injunctive relief—particularly if irreparable harm could occur before the failure in NEPA compliance is corrected.

Proposed Changes in Definitions or Word Replacements: Various Pages and Sections

The CEQ should not change the terms from "Context" to "Setting" and from "Intensity" to "Degree". We believe the changes will lead to confusion and varied interpretation across agencies. Changing of these terms and others might not be helpful due to the amount of case law and judicial interpretation of the terms to date. As described in the proposed rule for example, the term "setting" does not appear to cover the breadth of meaning formerly included in the definition of "context." If the CEQ goes forward with finalizing the word changes as proposed, the Final Regulations need more definition and clarity around the new words.

Areas of Support

The Organizations are supportive of the following proposed updates and offer suggested wording or enhancements for clarification to the Proposed Regulations for consideration by CEQ prior to issuance of the Final Regulations.

Spirit of NEPA: Page 1712, 1500.1 (a) and (b)

We support retaining these references to Sec. 101 of NEPA, which represents the "Spirit of NEPA" that should guide all Federal decision making. Clearly stating the purpose of NEPA to inform decision making vs. mandating a particular result is a positive addition. Also good is the clarifying paragraph supporting relevant environmental information early in process, collaboration and timely and efficient decisions.

Categorical Exclusions (CE): Page 1725, 1506.3(f)

Specifically related to CEs, we strongly support the provision allowing agencies to adopt another agency's determination that a categorical exclusion applies to a proposed action if the adopting agency's proposed action is substantially the same, the federal agency's CE was designated through an established NEPA procedural process, and/or when multiple agencies enter into joint projects or cross boundary activities involving adjacent lands. Currently some agencies policy only allows adoption of another intra-agency or bureau CE, thus hindering the effective and efficient use of other agency CEs for projects with similar non-significant effects. Individual agency jurisdiction should have no bearing on a rational analysis and determination that a category of actions normally does not have a significant effect on the human environment. We suggest adding the following clarification to the related language Page 1712, 1500.5(a) … "which do not individually or cumulatively have a significant effect on the human environment…" The Organizations support using multiple CE categories for a single proposed action as currently practiced by some agencies.

We also support Agency specific NEPA procedures for evaluation of extraordinary circumstances as they apply to a proposed action. Included in this is support for the use of Mitigated CEs as stated on Page 1715, 1501.4 (1) language in paragraph (b)(1), "When extraordinary circumstances are present, agencies may mitigate to avoid effects, allowing the proposed action to be categorically excluded. Making it clearer that the mere presence of extraordinary circumstances does not preclude the application of a CE.

We caveat our support of the CE section with one area of non-support. The Organizations do not support establishing CEQ Government-wide CEs. There are variations between agencies in the potential for extraordinary circumstances and environmental conditions in how they use and apply CEs. A common set of CEs would likely undermine individual agency CEs because a common set would be limiting. This is based on our experience with similar efforts over the past two decades. Also, the examples CEQ proposes for common CEs are likely not subject to NEPA to begin with.

Adoption, Tiering and Finding of No Significant Impact (FONSI): Page 1713, 1500.5 (b); Page 1715, 1501.5(b); and Page 1715, 1501.6(a): Page 1724 ad 1725, 1506.3:

We support the critical clarification regarding "Adoption" of others' environmental reviews in addition to the CEs mentioned above. The Organizations support clarifying the meaning of ''tiering'' to make clear that agencies may use EAs at the programmatic stage as well as the subsequent stages. Eliminating repetitive discussions of issues, and to focus on issues ripe for decision better facilitating agency use of environmental studies, analysis, and decisions conducted in earlier Federal, State, tribal or local environmental reviews or authorization decision. Incorporating tiering for EAs in regulations will further current agency practice and CEQ guidance.

The Organizations strongly support proposed changes clarifying that federal agencies can use documents required by statutes or prepared by State, Tribal and local agencies. We fully support this effort assuming the analysis is reasonably current and applicable to the project(s) planned. Very often when there are overlapping ownerships between agencies and/or state, tribal or local jurisdictions, the analysis and issues are identical and duplicating the analysis is inefficient, confusing to the public, and yields no benefit in the protection of land resources.

The Organizations support use of adoption of analysis and Tiering and we recommend that CEQ use the DOI language found in 43 CFR 46.120 to clarify adoption of analysis through agency developed environmental review procedures. Additionally, we support new paragraph (c)(4) that would provide that an agency may document its determination of whether a supplemental analysis is required consistent with its agency NEPA procedures. This provision should not require documentation, but rather state that documentation be based on agency specific policy.

We recommend that CEQ incorporate and use the DOI 43 CFR 46.140 language to clarify that an Agency may find a "Finding of No Significant Impact" or, for an EA tiered to an EIS that adequately analyzed a proposal's significant effects, a "Finding of No New Significant Impact"

Mitigated FONSI: Page 1715, 1501.6(c)

We support retention of the important NEPA concept of Mitigation, as well as attention given to the special compliance requirement associated with a Mitigated FONSI. One example of a broad mandate that provides authority for reasonable mitigation *beyond* reducing significance or meeting land use plan requirements is the Federal Land Policy & Management Act's Sec. 302(b) directive that the Bureau of Land Management "take any action necessary to prevent

unnecessary or undue degradation of the lands." Under this mandate, if impacts can be reasonably mitigated without unduly hindering the purposes of a project, not doing so would constitute unnecessary and undue impact.

Environmental Impact Statements:

The Organizations support several improvements to the Proposed Regulations related to EIS requirements or clarifications related to EIS development. These are found below.

Support definition of term "reasonable alternatives" to provide that alternatives must be technically and economically feasible; however, the phrase "reasonable range of alternatives" should be defined as what is meant by a reasonable range. Also, we do not support a required number of alternatives.

Support allowing use of documents required by other statutes to serve as a NEPA functional equivalency, like NFMA Forest Plans and comparable analysis such as under other types of environmental reviews i.e. CERCLA.

Support inclusion of allowing for the use of other Federal environmental analysis and documents and the use of State, Tribal, and local environmental studies, analysis, and decisions.

Support clarifying language regarding Cooperating Agency provision of comments related to limiting comments to its jurisdiction by law or special expertise and meeting timeframes if the final regulations have hard completion dates for the agencies. (Page 1716, 1501.8(b)(7))

Support Page 1719, 1502.9(d)(4) with the following amendment to the paragraph: "If developing procedures for EIS supplementation, agencies should survey the host of guidance documents and assessment "keys" that have been used to determine the need for supplementation (e.g., the BLM OR/WA and Forest Service Region 6 Key for *Assessing 'Significant New Information' Under NEPA and 'New Information Not Previously Considered' Under ESA for Ongoing Actions* (2008))."

Support retention of the listed elements on Page 1720, 1502.16(a) that provide important context for effects (e.g., relationship between short-term uses … and … long-term productivity; any irreversible or irretrievable commitments of resources; energy requirements and conservation potential of various alternatives and mitigation measures; natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures).

Support retention of requiring the ROD to verify that "the agency has adopted all practicable means to avoid or minimize environmental harm from the alternative selected, and if not, why the agency did not." This provision is in keeping with Sec. 101 of NEPA and is consistent with the BLM's FLPMA Sec. 302(b) mandate to "take any

action necessary to prevent unnecessary or undue degradation of the lands." (Page 1723, 1502.2(c))

Eliminating Obsolete Provisions (modernize):

The Organizations support the CEQ's effort to reduce existing Regulations and agency policies that are now obsolete due to changes in technology and communication media. We also recommend clarifying NOI requirements to reduce duplication of procedures in some agency specific regulations. Specifically, we support the following:

The CEQ's revised regulations that are more reflective of current technologies and agency practices that modernize the requirements for document formatting, electronic document publication of documents and incorporating information by reference in environmental assessments as CEQ has encouraged in existing guidance.

We support the following EIS Format changes**:**

1. Eliminating outdated requirements for listing to whom copies of an EIS were sent and the requirement for an EIS index.
2. Flexibility to use a different EIS format to better integrate environmental considerations into agency decision-making processes. We would suggest however that CEQ re-look at language being brought forward into the proposed rules' content requirements, as the proposed language currently appear to contain overburdened language which will act to counter the flexibility of use of different EIS formats.
3. 1501.12 clarifying the ability to incorporate by reference material into environmental documents.

The Organizations recommend that CEQ add language to Page 1716, 1501.9(d) to clarify that if the EPA publishes a Notice of Intent and Notice of Availability for an EIS, only Environmental Protection Agency's (EPA's) NOI or NOA is required and Agencies are not to issue a separate NOI or NOA which adds coordination time and can confuse the Public as to the correct comment period timeframes. This requirement would reduce duplicative actions in some agencies' current practices.

Enhance Coordination with States, Tribes and Localities: Page 1712, 1500.1(a)(b); 1716, 1501.8(b)(7); page 1724, 1506.2(d)

The Organizations strongly support and value partnerships and collaborative efforts. Both the BLM and FS currently have many strong partnerships with other federal agencies, states, tribes and local governments. Additionally, the BLM and FS are successful in achieving goals through collaboration in many forms. We feel the preamble and rule reflect this value asserted by policy and law.

We support, Page 1712, 1500.1(a)(b) retaining references to Sec. 101 of NEPA, "Spirit of NEPA". Also support, additive clarifying paragraph supporting relevant environmental information early in the process, collaboration and timely and efficient decisions.

We support page 1716, 1501.8(b)(7) clarifying the definitions and rolls of participating and Cooperating Agencies.

We strongly support page 1724, 1506.2(d) clarifying that NEPA does not require reconciliation. This is an important addition to the Proposed Regulations and should be carried through to Final.

We support Collaborative Efforts (Good Neighbor) and request that Agency grant monies such as Wildland Urban Interface funds (WUI) be used as an example of when "pass through monies or small amount of federal land is included in a local project, NEPA threshold isn't met and therefore not required.

Environmental Consequences: Page 1720, 1502.16(a)(10) and (b)

We support these additions to the Proposed Regulations. These sub-sections provide helpful language and should be included in the Final Regulations as they clarify that there must be an inter-related environmental effect of the proposed action to require NEPA.

Appeals: Page 1726, 1506.11(c)(1)

We support the helpful clarification regarding the use of other Agency procedures for the appeal times or wait period between FEIS and ROD – i.e. the BLM Protest, the FS Objection procedures.

Greenhouse Gas Emissions: Page 1710.

Per the CEQ's specific request on whether to issue guidance or regulation regarding Greenhouse Gas Emissions (GHG), the Organizations suggest separate guidance. We do not believe GHG, as a single category of impacts be addressed in the Proposed NEPA Regulations, nor should there be GHG specific regulations. Greenhouse gas emissions guidance should be developed based on agencies' experience and should be issued due to ever changing and updating science.

Conclusion

In closing, the Organizations appreciate the CEQ's effort to update the NEPA Implementing Regulations. The Organizations have highlighted areas of specific concern and items which we believe to require revision prior to issuance of the Final NEPA Implementing Regulations. We also provided specific and general comments for areas of support and recommended language or additions.

Based on members' experience, the Organizations propose that the CEQ work with agencies to develop a careful roll out strategy for immediate implementation upon issuance of the Final Regulations. Many updates have been proposed and if the proposed overhaul of these regulations is finalized, there will be much effort needed to ensure the roll out provides the best outcome for efficient and effective implementation of the new Regulations.

We strongly suggest a strong roll-out strategy and start-up training be provided to key agency NEPA and agency legal practitioners to facilitate successful implementation of the changes. Training will facilitate the ability of agencies to update their agency specific NEPA Regulations to incorporate the CEQ Final NEPA Implementing Procedure Regulations within the required 12 months stated in the Proposed Regulations. Training will also help build consistency across the federal government to successfully implement the new regulatory requirements.

Members of both the National Association of Forest Service Retirees and the Public Land Foundation stand ready to answer questions regarding our comments and to assist the Council on Environmental Quality the Forest Service and/or the Bureau of Land Management in the roll out of the Final Regulations.

James L. Caswell
James L. Caswell, Chair
National Association of Forest Service Retirees

Edward W. Shepard
Edward W. Shepard, President
Public Lands Foundation