



Ecological Society of America  
1990 M St, NW, Suite 700  
Washington, DC 20036

August 20, 2018

Mary B. Neumayr  
Chief of Staff  
Council on Environmental Quality  
730 Jackson Place NW, Washington, DC 20503

RE: National Environmental Policy Act Review

Dear Ms. Neumayr:

The Ecological Society of America (ESA) appreciates the opportunity to contribute public comment regarding the Council on Environmental Quality (CEQ) notice pursuant to the advanced notice of proposed rulemaking -- Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act -- concerning a review of the procedural provisions of the National Environmental Policy Act (NEPA) as published in the Federal Register (Docket No.: CEQ-2018-001).

Founded in 1915, ESA is the world's largest community of professional ecologists and a trusted source of ecological knowledge, committed to advancing the understanding of life on Earth. The 9,000-member Society publishes five journals and a membership bulletin and broadly shares ecological information through policy, media outreach, and education initiatives.

We thank CEQ for extending the initial 30-day public comment period. After reviewing this proposed rule, ESA respectfully urges CEQ to rescind the current proposal.

Great care should be exercised in revising the regulations at 40 CFR 1500-1508. NEPA is one of the nation's most important environmental laws. Its fundamental requirement that the federal government analyze and fully disclose to the public the environmental consequences of its actions has affected hundreds of thousands of decisions over nearly 50 years, and the implementing regulations have served the nation well over that period.

We have four major concerns about the current proposal: the arbitrary page limitation, the failure to accommodate important information formats, the complex links between the CEQ regulations and other regulations at CEQ and at other agencies, and the proposed limitations to public input and transparency.

First, we believe that setting arbitrary time limits and page lengths for NEPA analyses fails to recognize the great diversity of federal actions and complexity of issues that are addressed in environmental assessments and impact statements. The environmental documentation required to address, for example, remediation of high level radioactive wastes at a Department of Energy site will of necessity be more complex, and require more time, than that for construction of a single research facility. A one-size-fits-all approach risks failing to adequately address major issues and puts agencies at risk of prolonged litigation regarding the sufficiency of their NEPA reviews. Agencies must retain the flexibility to address potential

environmental impacts with rigorous and detailed analysis when necessary for full public communication and decision-making.

We also believe page limits are arbitrary because NEPA analyses should be increasingly reliant on non-page-based formats, like websites, as this is the medium through which most of the public now interacts with information. For example, a map or a rotational model of a watershed, each convey an enormous amount of information but don't have any word count or page length at all. Instead of applying page limits, we would urge you to consider establishing a balancing process that requires, through the scoping process, agencies to consider the complexity of the potential impacts and the level of analysis needed to provide an accurate and comprehensive assessment of those impacts and alternatives in the analysis, versus the goal's of NEPA and your Council to ensure that the analysis is comprehensible and useful to the general public. Such a balancing process would provide agencies with the discretion to adjust the complexity of the analysis to the action being considered, and give more weight to ensuring that the most important audience for such documents – the public – can make use of it.

Third, the CEQ regulations do not exist in isolation. Many federal agencies have agency-specific NEPA implementing regulations that incorporate the CEQ regulations by reference. See, for example, DOE's NEPA Implementing Procedures (10 CFR 1021), including "1021.103 Adoption of CEQ NEPA regulations. DOE adopts the regulations for implementing NEPA published by CEQ at 40 CFR parts 1500 through 1508. 1021.104 Definitions. (a) The definitions set forth in 40 CFR part 1508 are referenced and used in this part." Numerous other examples could be cited. Thus, changes in the CEQ regulations are likely to trigger the need to update those at other agencies, a complex and time-consuming set of tasks.

If significant changes are made to the regulations, consideration will also have to be given to revisions of the numerous CEQ guidance documents (see <https://ceq.doe.gov/guidance/guidance.html>), that build on and reference the regulations.

Finally and most importantly, the opportunity for the public first to provide input on the issues to be addressed in EISs (the scoping phase) and then to comment on the analysis in draft EISs is a key element in ensuring the transparency of federal actions and environmental analyses. Public engagement can help agencies identify and prioritize issues, develop and refine alternatives to the proposed action, and potentially build support for the final decision. Important technical expertise and crucial local perspectives can both emerge during public comment periods. No changes should be made that would limit the role of public involvement in NEPA processes.

Thank you for your consideration of these concerns. Please contact ESA if we can be of further assistance on this important matter.

Sincerely,  
Laura Huenneke, Ph.D  
President