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February 1, 2018

NEPA Services Group
c/o Amy Barker
USDA Forest Service
Geospatial Technology and Applications Center
2222 West 2300 South
Salt Lake City, UT 84119

RE: American Mountain Guides Association Comments on USDA Forest Service Advanced Notice of Proposed Rulemaking on NEPA Compliance

United States Forest Service Officials,

The American Mountain Guides Association respectfully submits these comments on the United States Forest Service (USFS) Advanced Notice of Proposed Rulemaking on National Environmental Policy Act Compliance, published at 83 F.R. 302 (January 3, 2018).

The American Mountain Guides Association (AMGA) represents the interests of the American mountain guiding community, which includes a diversity of climbing and skiing guides who provide inspiring and educational outdoor experiences for the public on National Forest lands. We define the professional standards by which mountain guiding is practiced in the United States, we serve as the American representative to the International Federation of Mountain Guides Associations (IFMGA), and our educational branch has trained over 13,000 climbing instructors, skiing guides, and mountain guides across the nation. Of additional relevance to this discussion, our membership includes outfitters and guides who have been operating on public lands since the inception of the modern commercial recreation permitting system. We have extensive experience with public land management systems, philosophies, and permitting, and we look forward to working with the Forest Service to increase the efficiency of the environmental review process.

AMGA Goals for the Rulemaking

The American Mountain Guides Association strongly supports the principles of the National Environmental Policy Act (NEPA) and we believe environmental review is a fundamental component of the land management decision-making process. Environmental reviews conducted at the right time and for the right reasons ensure U.S. Forest Service (USFS) managed lands remain attractive recreation destinations for a wide range of users. This is increasingly important as recreation grows in popularity and continues to be a primary way in which visitors connect with the National Forest. We also believe the NEPA process preserves opportunities for the recreating public to participate in decisions about the way the agency's lands and waters are managed.

As the agency considers a proposed rule on NEPA compliance, we believe an opportunity exists for the agency to streamline the environmental review process as it relates to issuing outfitter-guide permits. The environmental analysis requirements that are currently being applied to outfitting and guiding proposals are unnecessarily complex. This is placing undue administrative burden on USFS personnel and resources, and it is hindering the agency's ability to authorize facilitated recreation activities that connect people to National Forests.

The existing analysis requirements are also inequitable. The categorical exclusions (CEs) historically used by USFS for outfitter-guide permitting are relatively narrow and allow the agency few opportunities to authorize outfitting and guiding activities. In contrast, the agency's categorical exclusions for other activities allow it to authorize actions that have significantly larger impacts on the land than outfitting and guiding. For example, 36 CFR 220.6(e)(10) allows hazardous fuels reduction activities using prescribed fire on up to 4,500 acres of land. Similarly, 36 CFR 220.6(e)(12) allows the harvest of 70 acres of live trees and the construction of a half mile of temporary road.

Also of note, 36 CFR 220.6(e)(1) provides a categorical exclusion for the construction and reconstruction of trails. Conversely, the only categorical exclusion available to authorize outfitting and guiding on those same trails is for minor, short-term uses of one year or less (36 CFR 220.6(d)(8)). This appears to be out of balance and we believe it illustrates an opportunity for the Forest Service to align CEs for outfitting and guiding with those used for other activities on the National Forest Service System. For example, in the case cited here, outfitter-guide use of an established trail should not be subjected to a higher level of environmental review than the construction of the trail itself.

For these reasons, the USFS rulemaking process on NEPA compliance is timely and appropriate. We encourage the agency to use this process to explore opportunities for streamlining NEPA compliance procedures in the authorization of recreational outfitting and guiding. We believe this area holds significant promise for improving agency efficiency while at the same time preserving the purpose and intent of NEPA. Moreover, by reducing the extent of review in circumstances when detailed analysis is unnecessary, the agency will significantly enhance opportunities for the public to access their National Forests.

Specific Recommendations on NEPA Compliance

With the aforementioned principles in mind, American Mountain Guides Association makes the following recommendations for the agency as it develops its Notice of Proposed Rulemaking.

I. Conduct Reviews on a Broader Scale

The ANPRM seeks comment on "[a]pproaches to landscape-scale analysis and decision making under NEPA that facilitate restoration of National Forest System lands." We believe a landscape-scale approach to environmental review could also be of benefit to the authorization of recreation special use permits.

More specifically, we suggest the agency use programmatic environmental review and tiering strategies to approve outfitter-guide activities on a larger scale and over a larger geographic area. This would reduce the need to conduct detailed project-based, case-by-case environmental reviews of each outfitting and guiding proposal as it is submitted. With a broadly applicable environmental review in place, the agency could streamline approval of specific outfitting and guiding requests under one analysis and decision. The Mt. Baker-Snoqualmie National Forest in Region 6 has implemented strategies such as these and could serve as a model for other forests. To explore these opportunities, we recommend the agency include elements in the NPRM that encourage, or even require, the agency to utilize programmatic environmental analysis as a preferred method for environmental reviews of recreation activities.

II. Revise and Update Categorical Exclusions

The ANPRM specifically sought comments on whether there are "[c]lasses of actions that are unlikely, either individually or cumulatively, to have significant impacts and therefore should be categorically excluded from NEPA's environmental assessment and environmental impact statement requirements, such as . . . special use authorizations." 83 FR 302 (January 3, 2018).

We support this approach and believe recreation special use permitting is a class of actions that meet the ANPRM criteria for categorical exclusion from NEPA processes. In most instances, recreational outfitting and guiding activities take place on established recreational infrastructure that is already being used for the same activities by the general public. Furthermore, in many locations, outfitter-guide use is substantially less than that of the general public. In reference to these principles, the June 2016 Chief's guidance on modernization of special uses stated, "In many cases, proposed recreational activities that will take place on lands open to those same uses by the general public generally do not have significant impact on the environment and can be categorically excluded from further analysis." For these reasons, we recommend the agency consider recreation special use permitting as a focal point for categorical exclusion from NEPA processes. In the following section, we will describe the current CEs that apply to outfitting and guiding and we will recommend opportunities for enhanced CEs that will fulfill the goals stated in the ANPRM.

The Forest Service currently has three categorical exclusions (CEs) that apply to outfitting and guiding. They are as follows:

36 CFR Section 220.6(d)(8) excludes:

Approval, modification, or continuation of minor, short-term (1 year or less) special uses of NFS lands. Examples include, but are not limited to . . . (i) Approving, on an annual basis, the intermittent use and occupancy by a State-licensed outfitter or guide."

Subsection 220.6(d)(10) excludes:

Amendment to or replacement of an existing special use authorization that involves only administrative changes and does not involve changes in the authorized facilities or increase in the scope or intensity of authorized activities, or extensions to the term of authorization, when the applicant or holder is in full compliance with the terms and conditions of the special use authorization.

Subsection 220.6(e)(15) excludes:

Issuance of a new special use authorization for a new term to replace an existing or expired special use authorization when the only changes are administrative, there are not changes to the authorized facilities or increases in the scope or intensity of authorized activities, and the applicant or holder is in full compliance with the terms and conditions of the special use authorization.

There is also a Department of Agriculture CE for "educational and information programs and activities." 7 CFR 1b3(A)(4). This CE is available to the Forest Service but appears to be rarely used by the agency to authorize outfitting and guiding activity.

Taken together, these CEs exclude:

1. educational and information programs and activities;
2. one year permits for minor, intermittent use;
3. amendments and replacements of permits without changes to facilities, scope or intensity of authorized activities, or extensions of the term; and
4. issuance of a new permit for a new term to replace an existing or expired permit without changes to facilities or increases in the scope or intensity of authorized activities.

These existing CEs are relatively narrow and provide little opportunity for the agency to authorize recreational outfitter-guide activities, even when those activities are unlikely to have significant impacts. To explore opportunities for improved efficiency, we recommend the agency seek comment in the NPRM on potential modifications to existing CEs as well as the possibility of creating new CEs. We believe these revisions and updates should be limited to proposals for recreation activities that:

1. Take place at existing recreation areas that are open to the general public;
2. Are the same or substantially similar to existing recreational uses;
3. Are consistent with the applicable forest plan and Wilderness management plan; and
4. Do not significantly increase the scope or intensity of overall visitor use and do not exceed carrying capacity limits (if those limits have been determined).

To provide context, we offer the following examples of situations in recreation special use permitting that may hold opportunities for NEPA streamlining:

1. An outfitter-guide is seeking a new temporary permit and would like a term greater than one year to minimize re-submitting paperwork on a frequent basis. AMGA believes USFS should propose a modification to the CE at (36 CFR 220.6(d)(8)) to encompass this scenario.
2. An outfitter-guide would like to increase the number of service days for an activity that is already approved on a priority use permit and which takes place on lands open to those same uses by the public. AMGA believes USFS should propose a modified CE or a new CE to address this scenario.
3. An outfitter-guide would like to change the activities offered under the permit without changing the general location of the activities or the number of authorized service days. AMGA believes USFS should propose a modified CE or a new CE to address this scenario.

In consideration of these common situations that arise in the administration of outfitter-guide permits, we recommend the proposed rulemaking include draft revisions of existing CEs and/or new CEs that would allow the agency to (1) issue new temporary permits for a term greater than one year, (2) increase the number of authorized service days for an existing permittee, and (3) authorize an existing permittee to conduct new uses. Proposing revised CEs and/or new CEs such as these will enable the agency to determine whether there are avenues within recreation special use permitting that will improve agency efficiency and enhance opportunities for the public to access forest lands with an outfitter or guide.

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Thank you for the opportunity to comment on the USFS Advanced Notice of Proposed Rulemaking on National Environmental Policy Act Compliance. The AMGA believes environmental review is a fundamental component of the land management decision-making process. However, existing NEPA analysis requirements for recreation special use permitting are unnecessarily complex. To improve agency efficiency, we recommend including elements in the NPRM that direct environmental reviews on a broader scale, and which propose modified and/or new categorical exclusions for recreational special use permitting. We also encourage the agency to seek additional input through public engagement sessions and outreach, and we look forward to the opportunity to review and comment on the Notice of Proposed Rulemaking.

Sincerely,



Alex Kosseff
Executive Director
American Mountain Guides Association



Matt Wade
Advocacy & Policy Director
American Mountain Guides Association