



August 23, 2019

NEPA Services Group
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Submitted via email to nepa-procedures-revision@fs.fed.us

Submitted via public participation portal to:

<https://www.regulations.gov/document?D=FS-2019-0010-0001>

RE: Comments on *Proposed Rule, National Environmental Policy Act (NEPA) Compliance* (84 Fed. Reg. 27,544, June 13, 2019)

Friends of the Inyo wishes to provide the Forest Service with comments on the agency's proposed rule change regarding the National Environmental Policy Act (NEPA) 84 Fed. Reg. 27,544 (June 13, 2019), RIN 0596-AD31. Friends of the Inyo has over three decades of experience working with the Inyo National Forest on NEPA projects ranging from forest planning, vegetation and fire, recreation and travel management. Our organization and nearly 1,000 members would be adversely affected by this proposal, dramatically reducing and in some cases eliminating our ability to participate in the NEPA process. We are concerned the proposed rule change will have adverse impacts to the lands and waterways of the Inyo and Humboldt-Toiyabe National Forests, which we help steward and protect.

We previously provided comments on the Advanced Notice of Proposed Rulemaking and participated in planning workshops to help craft effective and substantial changes to the rule. Unfortunately, the Forest Service failed to incorporate our suggestions for improving the efficiency of NEPA while maintaining public involvement. The National Forest Foundation's 2018 Report, *Environmental Analysis and Decision Making Regional Partner Roundtables: National Findings and Leverage Points*, reviews what was learned at these meetings. The report identified nine related themes that participants identified as stumbling blocks to efficient environmental analysis and decision-making along with associated leverage points. These themes are: agency culture; resource conflict; personnel policies and staffing decisions; collaboration and partnerships; tribal, governmental and interagency consultation; capacity and resources; analysis documents and specialist reports; scale issues in environmental analysis and decision making; and research and science. While participants agreed there are strong attainable opportunities

to increase EADM efficiency, the proposed revisions to the rule diverge from significantly from the themes of the workshop and are not supported by the record.

The proposed rule takes the “public” out of public land management decisions, and seeks to expand the pace and scale of land management at the expense of sufficient environmental analysis. The foundation of NEPA is transparency, accurate scientific data and analysis, and inclusion of the public in federal agency decision-making. The Forest Service does not support in their findings, or provide an administrative record, that cutting out public involvement will improve the efficiency of their environmental process or the quality of their work. It’s possible that because the administrative record’s justification for the proposed changes is weak it will be met with litigation further tying up agency resources and time better spent on actual improvements to NEPA.

Condition Based Management

We caution against the use of Condition Based Management (CBM). Programmatic NEPA and landscape level approaches to meeting the demand for restoration on Forest Service lands is essential for achieving larger goals. The elimination of site-specific decision-making under NEPA altogether would be highly problematic for a variety of specific Forests and projects. The other troubling aspect of CBM is the removal of the USFS’s obligation to respond to public comment. In places where this tool is already in use, the approach is expected to support decisions at the landscape level with timber and fuels reduction projects on the scale of tens of thousands of acres, along with road building and associated infrastructure within a single decision. For those acres and roads, the public would not be able to provide input for site-specific concerns and the agency will miss many localized environmental impacts.

Determination of NEPA Adequacy

The Forest Service has also proposed adding to section §220.4(i) Determination of NEPA Adequacy. This new paragraph outlines the process for determining whether NEPA analysis performed for a previous proposed action can suffice for a new proposed action. It is not uncommon for EAs or EISs to become outdated and/or take multiple years to complete. We are concerned that utilizing a DNA in place of NEPA analysis for a new project will overlook changes in the environment, the human element (such as recreation) or conditions on the landscape. Additionally the language allows a deciding official the discretion to use a previous NEPA document that does not actually contain any analysis of the current project. A possible solution is to allow the use of DNAs on a very limited basis with strict directives on the use of this tool. Projects utilizing a DNA must go through scoping in order to provide notice and an opportunity for the public to comment both on the project and on whether a DNA is appropriate. Furthermore, it must be mandatory for the deciding official to issue a decision memo following the Decision of NEPA Adequacy to explain their decision.

Roadless Areas

Under the current rule Inventoried Roadless Areas (IRAs) or potential Wilderness areas normally require an EIS if a project will substantially alter the undeveloped character. The proposed rule aims to weaken this by revising the classes of actions that would

trigger an EIS. Similar to revisions to the Inyo National Forest Plan stripping existing plan specific protections for IRAs, the agency is asserting we can rely on the Roadless Area Conservation Rule (RACR) to provide adequate protection for these areas. There is extensive case law demonstrating that previously proposed projects would have substantially altered the undeveloped character of IRAs. Additionally there are numerous attacks on the RACR in Congress right now, including ongoing rulemaking in states such as Alaska and Utah.

It is also unclear what the Agency means by “Potential Wilderness Areas” as it refers to these areas on page 24 of Federal Register notice as “Congressionally designated areas”, yet only Wilderness Study Areas (managed by BLM) are Congressionally designated. “Potential Wilderness Areas” can in fact be Recommended Wilderness Areas under Forest Plans, which were identified through a NEPA process, including but not limited to, Forest Service wilderness inventories and evaluations and public comment. We disagree with the proposal to remove potential Wilderness areas from the list of actions normally requiring an EIS. Potential Wilderness areas are prized for their recreation, wildlife, and other conservation values, often representing our last remaining wild places. Once these areas have development entry such as logging or road building their wilderness character and values are lost forever. This is why it is so important for a full NEPA process to be carried out for projects in these areas.

Categorical Exclusions

The Forest Service is proposing to amend §220.4 of the NEPA regulations to eliminate the requirement to conduct scoping for Categorical Exclusions (CEs) and Environmental Assessments (EAs). Public notice of CEs would appear only in the Agency’s Schedule of Proposed Actions (SOPA), with no guarantee that the SOPA would be published prior to a decision being finalized or even before the project in question is implemented. Under the proposed revisions, whether or not the public would be alerted to proposals being analyzed under EAs would be at the deciding officer’s discretion.

We also have concerns about the liberal language and use of Categorical Exclusions outlined in §220.5 of the proposed rule. The Forest Service is proposing to allow the use of multiple CEs for a single proposed action. This would allow the Forest Service to authorize larger, far complex projects that would normally trigger an EA or EIS. CEs are intended to apply to small, narrowly defined, projects that are not likely to have significant effects. By breaking down larger, more complex, projects into CE-compatible pieces, the Forest Service will fail to notice, or analyze, significant effects of proposed projects. Since determining whether there is a “significant effect” on the human environment is the trigger for whether an EIS is required, using multiple CEs for a single project will undoubtedly result in the Forest Service inappropriately applying CEs and thus violating NEPA. It is not unlikely this will increase litigation and thus decrease the agency’s efficiency with decision-making.

The Forest Service is also proposing seven new CEs and proposing to expand two existing CEs. While we are not opposed to consolidating the existing CEs at (3)(15) and (d)(10) into a new CE at §220.5 (d)(11), as this would increase efficiency and reduce

confusion, the rule misses the mark on requiring that the responsible official submit a decision memo following an action. Requiring a decision memo would keep the public informed and creates a paper trail of administrative action. More troubling, the rule proposes CE(d)(11) which is so general it could almost be applied to anything remotely related to special uses. This CE should be limited to recreational special uses such as outfitting and guiding uses.

The proposed rule would expand existing CE §220.5(e)(3) to applicable projects on up to 20 acres from the current limit of five acres. Neither the proposed rule nor the supplementary information provided a rationale for why there is a need to expand this CE to cover projects up to four times larger than the current CE. This increase would entail a substantial level of disturbance and have an increased likelihood of impacting recreation or ecological resources. A public comment period would help identify these impacts and review of these decisions, before the project is approved, something the CE will not require.

The proposed new CE at §220.5(e)(22) follows the same theme as the other CEs and applies to recreation sites, of which there are many on the Inyo National Forest. Recreational sites could be easily converted to more developed sites with a much bigger development footprint. Allowing the public to have a voice in campground management is important since the vast majority of people weighing in on USFS decisions are recreating. It is important for campground construction and decommissioning, to undergo environmental analysis. An EA or EIS can consider the design and development through alternatives, in order to most effectively minimize environmental impacts and meet social needs, something a CE cannot achieve.

We are strongly opposed to the proposed new CE at §220.5(e)(25). This CE would cover converting an unauthorized or non-NFS road to a NFS road. Providing blanket authority to convert illegally created routes into the road system without review is not consistent with USFS objectives to reduce the number of designated routes. The Inyo National Forest was one of the first California Forests to complete a Draft Travel Analysis Report, a major first step towards putting the INF road system on a trajectory towards sustainability. The CE provides wholesale cover for converting illegal roads to NFS roads without public notice or input or environmental review. This proposed CE invites resource damage, user conflicts, and the public perception that illegal routes are welcome on Forest Service managed lands. This CE is contrary to decades of Forest Service travel management policy designed to make the National Forest road system more ecologically and fiscally sustainable and ensure compliance with the Travel Management Rule.

Similarly, CE §220.5(e)(23) allows the conversion of an unauthorized trail or trail segment to an authorized NFS trail without any public review or environmental analysis. It is critical that any new trail undergo analysis and public review prior to being added to the system. Motorized trails, including over-snow vehicle trails, must only be designated under the provisions of the Travel Management Rule.

CE (e)(23) goes against more than a decade of Forest Service policy that seeks to thoughtfully plan and manage motorized trails using the Travel Management Rule (2005). One example of the importance of NEPA review relating to trails here on the Inyo National Forest is the Mammoth Lakes Trails System Master Plan, Snow Creek Phase II project. The NEPA to authorize a segment of trail began in 2017 but was halted by the INF because of cultural artifacts found within the proposed trail corridor. If this project had been subject to a CE, cultural resources likely would not have been located and would have been lost forever.

We are supportive of the proposed new CE §220.5(e)(21), which covers the construction, reconstruction, decommissioning, relocation, or disposal of buildings, infrastructure, or other improvements at an existing administrative site. The Inyo National Forest has aging infrastructure ranging from recreational sites with failing water systems to buildings that are no longer used or maintained. We believe giving deciding officials the authority under a CE to address aging infrastructure is a meaningful way to increase efficiency under NEPA.

Finally, CE at §220.5(e)(26) allows for “ecosystem restoration and/or resilience activities” to be approved on up to 7,300 acres. This broad definition is mostly left open to interpretation by the deciding official and includes commercial logging on up to 4,200 acres – 6.6 square miles with as little as one restoration component. The restoration piece can be at any scale, not necessarily at the scale of the logging or other activities occurring. There are already CEs available for the Forest Service to meet ecosystem restoration goals and address wildfire concerns, such as the 2014 Farm Bill CE, which limits project area to 3,000 treated acres and restricts applicable projects to the Wildland Urban Interface. Also concerning is the 0.5 miles of permanent road construction allowed under the CE, contrary to previous USFS policy where roads are decommissioned as part of restoration. This proposed CE would undoubtedly increase large-scale commercial logging on many national forests by taking advantage of the agency’s need for ecosystem restoration and resilience.

Conclusion

The Forest Service, under the guidance of the Trump administration, is proposing a sweeping series of changes to its NEPA regulations that would effectively eliminate the public from decision making and allow deciding officers to be influenced by private industry. If these proposed revisions are enacted, the vast majority of Forest Service projects would not be subject to *any* public participation requirements. The revisions undermine the law’s basic tenants of government transparency, accountability, public involvement, and science-based decision-making. If the Forest Service wishes to actually address the causes of inefficiency in environmental decision-making, it should focus on increasing funding, staffing, and training and reducing staff turnover. In support of all the local agency employees on the two Forests in which we work, we recommend cancelling this rule change and focusing on the work already in progress, such as finalizing the Inyo National Forest Land management plan, continuing the use of programmatic NEPAs to increase the pace and scale of prescribed and managed fire on the landscape, and complete much needed recreation infrastructure improvements.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Wendy Schneider". The signature is written in a cursive, flowing style.

Wendy Schneider
Executive Director
Friends of the Inyo