



August 6, 2019

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NEPA Services Group
c/o Amy Barker
USDA Forest Service
125 South State Street
Salt Lake City, UT 84138

Dear Ms. Barker:

The National Association of Forest Service Retirees (NAFSR) very much appreciates the opportunity to provide comments regarding key changes to **36 CFR Part 220**, the proposed planning rule. We commend the USDA Forest Service for taking on the major challenge of making key changes to the regulations. NEPA is very important legislation, and it is also one of the most impactful on the Agency's ability to accomplish responsible work, on the ground, in an environmentally appropriate way. NAFSR strongly supports the proposed changes overall. These proposals are based on what the agency has learned and this should be the strongest and most basic reason for these changes. Although we believe that the reasons stated in these proposed regulations are correct in their context, we also strongly believe that the reasons for change are as follows:

1. Advanced technology
2. Substantial increase of on the ground learning of resource impacts and non-impacts
3. Latest research
4. What the agency has learned over the long term (over 60 years) cumulatively
5. Changes because of court judgments and actions

Important General Comments – (Not Categorized)

The following comments are critical in NAFSR's view, even though they do not fit into a specific category.

1. There should be clarification if there are any changes in the listing of new CE categories that are changed from draft to final or because of litigation, while the remainder of the new categories remain intact.
2. There should be a total review prior to going Final about what should be in the regulations vs. policy of the agency, since regulations have the power of law interpretation and lock in requirements with little flexibility.
3. A cross reference exercise should be completed with present CEQ regulations to ensure that there is no conflict between the NEPA proposals and direction from CEQ. There appear to be some examples in the proposed regulations that may be in conflict.
4. Do not list any requirements in the proposed NEPA regulations that are presently in the Planning Rule
5. On page #28, regarding NEPA amendments; reference is made that "these concepts, however, will take some time to become well established and widely used: potential benefits will occur over time". We respectfully submit that **the Agency does not have the time** to use this approach and that any new changes must be implemented vigorously in an organization the size of the Forest Service. Execution must come immediately with accountability. Having this approach of "hoping" that it will occur over time will simply not work and many of us with vast experience in the Agency can attest to that. The situation is too dire to take this approach and the language should be changed to firmly state that it will be implemented immediately, with guidance and accountability.
6. Many of the suggestions regarding timing requirements of environmental documents should be regulated with policy, handbooks, etc. and not through regulations that have the force of law. Inserting into regulations could cause serious issues regarding the variances that may be needed of analysis for complexities of different projects. However, the accompanying policies that would result from the regulation changes should address the timing of environmental documents and ensure that there is **clear direction** regarding efficiency and accountability.

Rearrange CFR Sections – (Sections 220.1, 220.2, 220.3, or 220.4)

Specifically, rearranging the CFR sections to align with the levels of NEPA documentation is a very smart and helpful way to implement NEPA. This change alone will encourage line officers to first consider whether a Categorical Exclusion would apply to a proposed action.

Condition Based Management – (Sections 220.3 and 220.4 (j))

NAFSR is very supportive of the use of condition-based management because of the flexibility it provides line officers to implement projects while accounting for changing conditions on the ground over time. A tightening up of the definition in the regulations should be completed before the final regulations are completed so that there is crisp and clear intent and definition for interpretation by the agency, the public, and potentially the courts.

Scoping and Public Engagement – (Section 220.4(d))

The Agency's new approach to scoping and public engagement makes good sense and we are certain that this will be very helpful. The rule removes the uncertainty and inconsistency that has developed for line officers over many years. As noted in your proposed rule, engagement requirements will still exceed the requirements of CEQ's NEPA regulations notifying the public through posting all EIS's, EA's, and CE's with an associated decision memo to the Schedule of Proposed Actions. We support this completely.

Determination of NEPA Adequacy – (Section 220.4(i))

We fully support the proposed rule that adds Determination of NEPA Adequacy. This will improve efficiency by reducing redundant analyses of similar proposed actions with substantially similar impacts.

Categorical Exclusions - (Section 220.5(d) Section 220.5(e) and 220.6)

NAFSR is excited that the proposed rule adds new, and revises existing, categorical exclusions for restoration projects, special use authorizations, and management of agency infrastructure. We strongly support CFR 1501.7(e) the discussion of cumulative effects and bringing a more reasonable approach to that critical analysis to clearly define what is needed and what is not.

Of special note; we also **STRONGLY** support 220.5 section (d) "*Categories for actions for which a project or case file and decision memo are not required*". This list makes absolute sense based on actions over the past 60 years, and NAFSR fully supports the items listed. We have found that the agency has been very inconsistent on what projects are required to have NEPA completed. This has resulted in unnecessary resource time impacting staff and line officers. Making the argument about tiering to existing Land Management Plans is critical and unique for the agency, and these regulations spell that out. The review that was accomplished in terms of past projects was commendable and we strongly agree with the premise that this fits within the very purpose of using CE's.

We very much support the provision to use CE's of other agencies for projects implemented jointly. The proposal that line officers can now apply multiple CE's to a single decision memo is excellent and within the scope of the intent of NEPA. We also strongly support consolidation of categories, the creation of 7 new CE's with decision memos including the very important one regarding work on existing facilities. Clarifying the use in collaboration with other Agencies is critical as well.

Extraordinary Circumstances Review - (Section 220.5(b) (2))

We agree with the proposed rule to update the agency's approach to the Extraordinary Circumstances Review. These changes will also make CE's easier to apply.

Environmental Assessments and Impact Statements - (Section 220.4(a), 220.6 and 220.7)

The primary purpose of the NEPA Administrative Regulations is to interpret the requirements of the NEPA Act and set forth the process and procedures that the FS will follow in land management activities. 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 Secretary, in these proposed Regulations, provide practical and

reasonable definitions of these 2 words, as they apply to land management activities, to guide field employees in their determinations of whether or not an EIS is required for specific ground disturbing projects. Since Administrative Regulations have the force of law in court, the Supreme Court has said that Federal Judges should normally defer to the interpretation of the law by the responsible Agencies, as long as it is reasonable and not arbitrary. This puts a heavy responsibility on the Secretary to further define these 2 words in reasonable and practical terms in the Regulations. Yet, in our reading of the Regulations, we do not find any attempt to do this, other than providing some examples of actions that both do and do not require an EIS with little supporting rationale. At best, these examples only give implications of what may or may not be considered major FS actions significantly affecting the quality of the human environment. The NEPA Regulations should be more direct and represent the best judgment of the Secretary and the FS in defining these 2 critically important words in the NEPA Act.

For example, any proposed action that would result in long-term off-site water or air pollution would be significant and would require an EIS. However, short-term effects that are considered normal for the type of proposed actions would not be considered significant. The NEPA Working Group should keep thinking about and adding additional parameters to describe or define the type of projects that would require an EIS.

We particularly appreciate that the proposed rule emphasizes that the primary purpose of preparing an EA is to reach a finding of no significant impact or to determine that an environmental impact statement is even necessary. Clearly defining the classes that normally require an EIS is overdue and this will help enormously when line officers need to make that determination. It is a strong step forward that will focus the analysis in EA's resulting in a reduction of EIS's. NAFSR is very positive regarding the proposal to modify the list of actions that normally require an EIS, but not specifically require certain projects to complete said EIS. This will be a major step towards fewer EIS's and mirror what other land management agencies have been accomplishing in the past years.

Thank you for your very bold approach to make NEPA more manageable, but remaining true to the law's intent of analyzing resource actions and their effects. We strongly support these changes and they should remain a major tool for sensible and responsible land management.

Thank you for considering our comments.

Sincerely,

James L. Caswell

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

**cc: Doug Crandall
Christine Dawe
Chris French
Vicki Christiansen
Jim Hubbard**