August 26, 2019

VIA FEDERAL E-RULEMAKING PORTAL / REGULATIONS.GOV

NEPA Services Group
Attn: Amy Barker
USDA Forest Service
125 South Street, Suite 1705
Salt Lake City, UT 84138

RE: United States Forest Service, *Proposed Rule, National Environmental Policy Act (NEPA) Compliance*, 84 Fed. Reg. 27,544 (June 13, 2019)
36 C.F.R. Part 220; RIN 0596-AD31
Docket No. FS-2019-0010

Dear Ms. Barker:

These comments on the Forest Service's proposed rules captioned above are submitted on behalf of the American Forest Resource Council (AFRC) and the additional signatories below. AFRC and our members strongly support the proposed rules and urge the Forest Service to incorporate additional provisions that we believe will significantly strengthen them. AFRC agrees with the opinions of professional foresters and land managers, and the findings of Congress, that forest health in the National Forest System is at a crisis point. These regulatory improvements, if adopted, will not solve the forest health crisis. But they will ease some of the roadblocks that have impeded the Forest Service in its efforts to increase the pace and scale of forest restoration. The pace and scale needs to be increased by an order of magnitude or more, an increase which will not be possible absent improvements to the Forest Service's compliance procedures.

AFRC is a regional trade association whose purpose is to advocate for sustained yield timber harvests on public timberlands throughout the West to enhance forest health and resistance to fire, insects, and disease. We do this by promoting active management to attain productive public forests, protect adjoining private forests, and assure community stability. We work to improve federal and state laws, regulations, policies and decisions regarding access to and management of public forest lands and protection of all forest lands. AFRC represents over 50 forest product businesses and forest landowners throughout Washington, Oregon, California, Idaho, and Montana. Many of our members have their operations in rural communities adjacent to National Forest lands, and the management on these lands ultimately dictates not only the viability of their businesses, but also the economic health of the communities themselves.

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As noted in the Background section of the Proposed Rule, the Agency's NEPA Handbook was last comprehensively revised in 1992, more than 25 years ago. In the intervening quarter century, a litigation-driven approach to NEPA has led the Forest Service to engage in exhaustive NEPA analysis which has restricted the Agency's ability to eliminate or prevent damage to the environment, which is one of the key purposes of NEPA, 42 U.S.C. § 4321. In the intervening years, timber outputs from the National Forests declined from over 5.7 Billion Board Feet (BBF) in 1991 to just over 1.5 BBF in 2002; a dramatic decline of more than 73 percent. Harvest levels have yet to fully recover to near the roughly 6.2 BBF production level provided in current National Forest Plans; total output in FY 2018 was 3.187 BBF. This validates earlier concerns about effects from pushing for more and more paperwork instead of better paperwork. "If managers spend all their time planning and deciding, but never make action happen on the ground, then … [t]he means have become ends in themselves." P. Culhane, *NEPA's Impacts on Federal Agencies, Anticipated and Unanticipated*, 20 Envtl. L. 681, 700 (1990).

As a result of this dramatic decline in harvest activity, the National Forest System has suffered unprecedented declines in forest health resulting from overstocking, stand stagnation, and drought stress. In 1999, the Forest Service said that about 39 million acres of National Forest lands were "at high risk from catastrophic fires." Today, that total has skyrocketed to over 89 million acres—close to the size of Montana. The August 2018 Forest Health report to Congress indicated 63.2 million Forest Service acres at "high or very high hazard" in the lower 48 states alone. The report showed that the Forest Service treated 3,077,918 acres in FY 2018 to mitigate wildfire, insect, or disease risk. Yet in the same period 2,307,000 acres burned, leading to a net treatment of only 770,918 acres, or *0.4 percent* of the National Forest System. Put another way, at current rates it will take *over 115 years* to treat all acres that are at high risk.

While forest health needs have increased geometrically, the Forest Service, under the 1992 Manual and Handbook, has become steadily less efficient at moving needed land management projects through the NEPA process. The average number of days to prepare an environmental impact statement (EIS) has risen from 817 days to over 1,300.[1] The average number of days to complete an environmental assessment (EA) increased from 594 days to 730 days. While the 2012 Council on Environmental Quality (CEQ) Guidance says that EISes should "normally" be less than 150 pages, and EAs should generally be between 10 to 15 pages,[2] the Forest Service is notorious for producing EAs and EISes that run to several hundred pages, with associated documentation running into the thousands of pages.

According to the Government Accountability Office (GAO), between 2008 and 2012 the Forest Service produced more than twice as many EISes as the Army Corps of Engineers or the Federal Highway Administration, and nearly two and a half times as many as the Bureau of Land

[1] Recognizing the procedural burden, courts "assume[] that it takes an agency at least 360 days to prepare an EIS." *Jamul Action Comm. v. Chaudhuri*, 837 F.3d 958, 965 (9th Cir. 2016); *Jones v. Gordon*, 792 F.2d 821, 826 (9th Cir. 1986).

[2] Council on Environmental Quality, "Memorandum for Heads of Federal Departments and Agencies: Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act, 6 March 2012," *available at* https://ceq.doe.gov/guidance/guidance.html.

Management. According to that same study, it takes the Forest Service longer to complete all types of NEPA analyses than other Federal agencies.[3]

It is worth noting that the Forest Service, while doing this exhaustive NEPA analysis, is usually proposing management of renewable forest and range resources on lands that have been designated either as suited for timber production, or on which timber production is allowed under existing forest plans (which themselves go through extensive public involvement, including NEPA). These management projects are not generally conducted on the extensive network of "protected" (i.e., reserved from management) lands under its jurisdiction. The Supreme Court has recognized that an agency's long experience in conducting a particular type of activity is relevant to the environmental analysis and impacts of the activity. In *Winter v. NRDC*, the Supreme Court, in reversing the grant of an injunction, found it "pertinent" to the question whether an EIS is required "that this is not a case in which the defendant is conducting a new type of activity with completely unknown effects on the environment." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 23 (2008). Thus, courts have generally affirmed agency decisions not to prepare an EIS in the absence of finding "new techniques, the techniques are unique to the region, or they are experimental such that the results are unpredictable." *Am. Wild Horse Campaign v. Zinke*, 353 F. Supp. 3d 971, 988 (D. Nev. 2018) (collecting cases). None of the activities described in the Proposed Rule are new or unique to a region, much less experimental. Instead, courts have recognized the likelihood that "the effects of forest management projects could be reasonably predicted based on prior data." *Ctr. for Biological Diversity v. Kempthorne*, 588 F.3d 701, 712 (9th Cir. 2009) (citing *Native Ecosystems Council v. U.S. Forest Serv.,* 428 F.3d 1233 (9th Cir. 2005)).

Overdoing NEPA paperwork not only impedes the Forest Service in accomplishing its goals on the ground, but also undermines its ability to carry out the fundamental aim of NEPA, informed decisionmaking. "NEPA itself does not mandate particular results, but simply prescribes the necessary process." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). Thus, "[i]f the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs." *Id.*

Overly dense documents, or using an EIS when an EA is sufficient, or an EA when a Categorial Exclusion (CE) is available, obscure the key issues from the public and agency decisionmakers. The current procedures are an example where "ironically—rules created to communicate more information can result in knowing less." D. Vaughan, *Rational Choice, Situated Action, and the Social Control of Organizations*, 32 Law & Soc'y Rev. 23, 42 (1998). Truly focused documentation instead highlights issues of most concern or uncertainty, enabling the public and decision makers to identify and evaluate potential adverse effects. Focused documentation appropriately brings the agency's expertise to bear in highlighting those impacts, better serving

[3] U.S. Government Accountability Office, Report to Congressional Requesters, *National Environmental Policy Act: Little Information Exists on NEPA Analyses*, April 2014. GAO-14-369.

the public and leading to better decisions.[4]

According to CEQ regulations, "NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail." 40 C.F.R. § 1500.1(b). As CEQ warned, "[u]ltimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork - even excellent paperwork - but to foster excellent action." 40 C.F.R. § 1500.1(c). The proposed regulations are a step in the right direction. They further the CEQ mandate to "[i]mplement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives." 40 C.F.R. § 1500.2(b). Thus, while it is correct that the proposed CEs will reduce paperwork and delays, they will serve the overriding purpose of improving analytical quality of Forest Service NEPA documents.

We are aware that some groups and commenters have characterized the Proposed Rule as "cutting out" public involvement from certain activities that may now be subject to a CE. These comments reflect a gross misunderstanding of the Proposed Rule and of NEPA itself. The Forest Service has been conducting activities similar to those identified in the restoration CE for decades, if not a century or more. It has done a deep dive on the effects of such work and found that significant environmental effects are not likely to occur. This is backstopped by the requirement to consider whether extraordinary circumstances exist. Proposed 36 C.F.R. § 220.5(b). The public involvement provisions here are appropriately tailored to the scope and extent of specific projects and are consistent with the CEQ regulations. Those regulations impose a flexible standard ("practicable") for public involvement in EAs. 40 C.F.R. § 1501.4(b). Even for an EA, there is no categorical requirement to circulate a draft document. *Bering Strait Citizens for Responsible Res. Dev. v. U.S. Army Corps of Engineers*, 524 F.3d 938, 952 (9th Cir. 2008); *TOMAC, Taxpayers of Michigan Against Casinos v. Norton*, 433 F.3d 852, 861 (D.C. Cir. 2006).

The Proposed Rule provides an appropriate baseline for public involvement which complies with CEQ's regulations and NEPA. The proposal will provide at least one opportunity for the public to weigh in on every Forest Service action. It also provides agency officials substantial discretion to add further steps based on the type of action, in keeping with the wide variety of actions the Forest Service conducts. Further, while some may be concerned that the Proposed Rule would cause the Forest Service to "increase" use of CEs, it is important to keep in mind that these are actions which do not have significant environmental impact and do not present extraordinary circumstances. Moreover, the *number* of actions using a CE is not particularly

[4] It is well-established in the safety literature that too much process can impede an organization's operational integrity and interfere with making decisions that serve the organization's values. *See, e.g.*, Vaughn, *supra*; S. Sagan, *The Limits of Safety* 31 (1993) (noting that "adding redundancy often makes the system more opaque"); C. Perrow, *Normal Accidents* (1984). The result is the phenomenon known as 'goal displacement,' a situation in which strict adherence to rules that were originally established to achieve certain ends become ends in themselves." M. Blumberg, *Why Good Engineers Make Bad Decisions: Some Implications for ADR Professionals*, 108 Penn St. L. Rev. 137, 142 (2003).

illuminating, as it should include issuance of many special use permits and the like. For example, among the National Forests on the westside of Region 6, the Willamette National Forest has been by far the most active in utilizing CEs to contribute to their vegetation management program. Over the past three fiscal years (2017-2019), the Willamette has used CEs to implement 12.6 Million Board Feet (MMBF) of their 236.2 MMBF accomplishment; 5.6% of their total. The remaining 94.4% of their program was implemented through the use of EAs and EISes. We are hopeful that the Proposed Rule will enable treatment of more acres overall, but not simply through CEs, but also with tools like the Determination of NEPA Adequacy (DNA) and other procedural refinements.

In general, the Forest Service should be careful about imposing new requirements on itself via use of "shall" or "must" in regulations. Forest management is a dynamic process requiring significant exercise of discretion. Where possible please replace "shall"/"must" with "may" or "should."

We submit the following specific comments on the Proposed Rule:

220.1 Purpose and scope
Subsection (b) should be eliminated or changed to provide that compliance with USFS regulations is in compliance with the CEQ regulations.

220.3: Definitions:
Adaptive Management: We strongly support the inclusion of the new term "adaptive management." (Proposed Rule, 84 Fed. Reg. 27552, 220.3). We look forward to engaging with the development of Forest Service handbook guidance to ensure this approach can be implemented by line officers. We suggest replacing language regarding "intended effect" with "achieving the purpose and need."

Condition-based management: We strongly support the proposed inclusion of "condition-based management." (Proposed Rule, 84 Fed. Reg. 27552, 220.3). There are many routine forest management activities – including activities intended to implement land use allocations in National Forest management plans ("forest plans"), which are well understood. We look forward to reviewing additional guidance on this subject in changes to the Forest Service handbook, as the Proposed Rule does not – in our view – provide enough information for this approach to be readily usable by on the ground managers.

Environmentally Preferable Alternative: We support the proposed change which defines this as the alternative that will best promote the national environmental policy as expressed in NEPA Section 101 (42 U.S.C. 4321) (Proposed Rule, 84 Fed. Reg. 27552, 220.3). We object, however, to the inclusion of the sentence which alleges that the environmentally preferable alternative is ordinarily the alternative "which causes the least harm." With this addition, the Forest Service introduces ambiguity and attempts to introduce – in however a nuanced fashion – a "precautionary" approach which is bound to cause confusion, and which has no basis in statute. The idea of "harm" is not well defined here and ignores the fact that the Forest Service must always view forest conditions over the long term, or at least over the term of the forest plan.

Congress enacted similar direction in section 106 of the Healthy Forests Restoration Act, 16 U.S.C. § 6516(c)(3).

In the short term, a clear cut or heavy shelterwood harvest may reduce the use of a specified area by species who prefer closed canopy forests for a part of their life cycle. However, over the reasonably foreseeable future, a project like this will likely provide habitat that would not otherwise be available for other species which prefer open stand or non-forest conditions. The term "harm" here does not help guide decision makers or show how a project meets either its own purpose and need or longer-term forest plan objectives. It also feeds into inaccurate perceptions of active forest management as being equivalent to "harm." This phrase should be dropped from the final rule.

Additionally, specific language should be added reflecting that improvements in forest health over the long term will promote national environmental policy.

Reasonably foreseeable future actions: The proposed definition is too broad, particularly with the inclusion of "funding" which may precede identification of a proposal.

220.4 General Requirements

The purpose and need statement for all projects should recognize the forest plan land use designations that apply in the project area. When conducting projects on National Forest acres that are designated in current forest plans as suited for timber production, the Forest Service should acknowledge that fact in the purpose and need statement and in the discussion of the proposed project. The National Forest Management Act of 1976 (P.L. 94-588) requires the Forest Service to identify National Forest acres which are suited for timber production. These acres make up only 24 percent of the National Forest System. The level of scrutiny on these lands should be appropriate and reflect the fact that they have already been determined to be suited for commercial activity in the Forest Plan, for which an EIS was already prepared. There should be a presumption that no further EIS is necessary given the expectation of harvest impacts on the landscape should be built into the NEPA analysis.

All purpose and need statements should recognize the importance of maintaining local forest products infrastructure. Without this infrastructure, none of the treatments the Forest Service wants to accomplish would be possible. These statements should also recognize the importance of designing projects that are economically feasible.

The purpose and need for projects on General Forest land (known as "Matrix lands" in areas covered by the Northwest Forest Plan) should include managing these lands to meet the sustained-yield requirements of the Multiple Use Sustained Yield Act and the adopted Land and Resources Management Plans, including providing the allowable sale quantity of timber under those plans.

Purpose and need statements should not require an ecological objective; they simply must accurately describe the aims of the project. Accuracy and clarity in the economic or other objectives of a project will build public trust, whereas inaccurate (or debatable) claims of ecological benefit diminish it. Such transparency is more in line with NEPA, which is a

procedural statute requiring disclosure of the effects of a proposed action.

Purpose and need statements should use easily measured metrics, such as acres of early seral habitat created, or acres reduced to acceptable basal area.

We strongly support the Proposed Rule's provision which makes it clear that responsible officials have the obligation to lead the NEPA process (Proposed Rule, 84 Fed. Reg. 27552; 220.4(c)(1)). Currently, many Forest Service NEPA analyses are staff led, without active engagement from the Forest Supervisor or District Ranger. Emphasizing the active leadership of line officers enhances accountability. We are hopeful that further revisions to the handbook will substantively connect completion of NEPA to accomplishment of forest plan objectives. Accountability for management of the NEPA process will not be meaningful absent accountability for meeting forest plan objectives – including timber targets and management of suitable timberlands.

The General Requirements section of the rule would be the appropriate place to incorporate existing CEQ guidance and regulation on the appropriate scope and scale of NEPA analysis required on specific projects. While the section-by-section says that the Proposed Rule "outlines an approach for right-sizing" (Proposed Rule, 84 Fed. Reg. 27545) public engagement, we believe that closer adherence to existing CEQ guidance and regulations will result in faster, easier to understand processes that will lead to better management outcomes on the ground.

Specifically, the March 6, 2012 Memorandum from the White House Council on Environmental Quality, cites the following CEQ regulations which are pertinent to the scoping process: 40 CFR 1501.7(a)(3) allows an agency to "use scoping to identify and eliminate from detailed study issues that are not significant or have been covered by prior environmental review." Other sections of CEQ regulation specifically allow agencies to establish page (40 CFR 1501.7(b)) and time (40 CFR 1501.8) limits for NEPA reviews and completion of NEPA processes. 40 CFR 1500.5(e) establishes "appropriate and predictable time limits" and "promotes efficiency of the NEPA process;" 40 CFR 1506.10 40 and 1501.8, "encourage Federal agencies to set appropriate time limits for individual actions, however, and provide a list of factors to consider in establishing timelines." The Proposed Rule should incorporate those regulations at 220.4(d), much like 220.4(e) incorporates other specific CEQ regulations (Proposed Rule, 84 Fed. Reg. 27553). The Forest Service should look closely at establishing specific timelines for particular types of analysis.

We strongly support the addition of both the DNA (220.4(i), 84 Fed. Reg. Proposed Rule 27553) and Adaptive Management. As with many other sections, we look forward to engaging in the development of Forest Service handbook directives to provide further guidance on these topics. We strongly urge the Forest Service to encourage the use of existing forest plans in making these determinations, and to allow maximum geographic flexibility in making determinations of NEPA adequacy. The Bureau of Land Management has substantial positive experience with the DNA process which gives further basis for the Forest Service to adopt it.[5]

[5] BLM Manual Handbook H-1790-1, National Environmental Policy Act, § 5.1, at 22-25.

Land use allocations are made in forest plans and forest plan revisions and amendments, and should be acknowledged and incorporated into project level NEPA analysis. Projects conducted on suited timberlands should recognize that harvest on these acres has already been considered in the forest plan development process, which also goes through NEPA review and consultation with other agencies. We are concerned that the Adaptive Management proposed regulation is too prescriptive, using the term "must" where "should" would be more appropriate.

We also urge the Forest Service to incorporate a provision specifically recognizing that a project can go forward if the responsible official determines that the project still meets the purpose and need statement, even if a changed condition exists in all or part of the project area. This could be considered part of adpative management (220.4(j), Proposed Rule 84 Fed. Reg. 27553).

We are strongly supportive of the addition of paragraph 220.4(k) regarding condition based management (Proposed Rule 84 Fed. Reg. 27553).

The proposed language in section 220.4(l), regarding supplementation, is overly restrictive and departs from caselaw. A supplement is only required if changed circumstances show a "*seriously* different picture of the likely environmental harms stemming from the proposed project," *Tri-Valley CAREs v. U.S. Dep't of Energy*, 671 F.3d 1113, 1130 (9th Cir. 2012) (quoting *Wisconsin v. Weinberger,* 745 F.2d 412, 416-17 (7th Cir. 1984)) (emphasis added). Please amend the proposed reuglation to reflect the state of the law.

Section 220.4(c)(6) of the Proposed Rule appears to require ultimate decisions to be "encompassed" within the ranged of alternatives for NEPA analysis. This is overly restrictive and should be changed to acknowledge that an ultimate decision is appropriate so long as it is the logical outgrowth of the alternatives considered. *See, e.g.*, *Envtl. Def. Ctr. v. E.P.A.*, 344 F.3d 832, 851-52 (9th Cir. 2003).

220.5 Categorical Exclusions

AFRC strongly applauds and supports the inclusion of the proposed new Categorical Exclusions, particularly the one established for forest restoration (Proposed Rule 84 Fed. Reg. 27557 220.5(e)(26)). As the supporting statements note, the process of promulgating administrative CEs is established in both the NEPA statute itself and implementing regulations (Section 102 of NEPA (42 U.S.C. 4332)) and CEQ's implementing regulations (40 CFR 1500-1508). The proposed restoration CE was based on careful analysis of 68 randomly selected projects from over 718 projects completed under an EA from fiscal years 2012 to 2016. It is worthwhile to note that using a CE is a form of compliance with NEPA. It is not, as some might claim, an exemption *from* NEPA. *Ctr. for Biological Diversity v. Salazar*, 706 F.3d 1085, 1096 (9th Cir. 2013).

We applaud the changes proposed to clarify that the mere presence of a specific resource conditions does not preclude the use of a CE, whether promulgated by the Forest Service or enacted into law by Congress (Proposed Rule, 84 Fed. Reg. 27554, 220.5(a) through (f)). The Proposed Rule rightly requires both a cause-and-effect relationship and a likelihood of substantial adverse effects. Moreover, it should be noted that short-term effects are frequently more than compensated for by long-term benefits, such as the ability to return forests to more

natural stocking levels and fire regimes. We also support the clarification in section 220.5(a) that categories of CEs do not constrain one another.

The language regarding extraordinary circumstances appears excessively broad. Proposed Rule 220.5(b)(2) should be changed to state that extraordinary circumstances exist when the proposed action *is likely* to cause substantial adverse effects to sensitive resources.

Proposed section 220.5(a) should clarify that the "extraordinary circumstances" process applies to statutory CEs only if specifically directed by Congress. For example, the 2014 Farm Bill CE, 16 U.S.C. § 6591b, does not require extraordinary circumstances analysis, whereas similar statutory CEs for applied silvicultural assessments, wildfire resilience, and mule deer and sage-grouse habitat include specific "extraordinary circumstances" requirements. 16 U.S.C. §§ 6554, 6591d, 6591e.

We note that the supporting documents provided for the restoration CE provide strong documentary backing for adoption of this important new tool. As noted, the term "restoration" is defined within agency guidance documents as "the process of assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed. Ecological restoration focuses on reestablishing the composition, structure, pattern, and ecological processes necessary to facilitate terrestrial and aquatic ecosystems sustainability, resilience, and health under current and future conditions."

One example, gleaned from the supporting documentation, helps illustrate the need for the new CE for restoration. The French Fire burned in California's Sierra National Forest in the summer of 2014. The Forest Service proposed restoration work after the fire, which burned over 13,000 acres, on about 5,900 acres. In order to accomplish this project, the Forest Service spent about one year, producing a 303-page EA, as well as over 16 specialist reports and appendices which totaled over 1,300 additional pages. Keep in mind that CEQ's guidelines state that EAs should generally be no more than 15 pages, and EISes can range up to 300 pages "for proposals of unusual scope or complexity." This was a restoration project being conducted on 0.5 percent of the Sierra National Forest. The project was litigated and the court confirmed that an EIS was not required. *Ctr. for Biological Diversity v. Gould*, 150 F.Supp.3d 1170, 1183-85 (E.D. Cal. 2015).

In the final rule, the Forest Service should clarify the relationship of subsection (h) to the CE established by this section (220.5(e)). Timber harvest, particularly harvests designed to accomplish specific forest plan objectives such as stocking levels or creation of early seral habitat, should be viewed as a restoration activity and be allowed on the full complement of acres covered by this CE.

The proposed new CE for roads (84 Fed. Reg. 27557, 220.5(e)(24)) allowing the construction or realignment of up to 5 miles of NFS roads, reconstruction of up to 10 miles of NFS roads and associated parking lots, opening or closing an NFS road, and culvert or bridge rehabilitation or replacement along NFS roads is an important new tool. We support its inclusion in the final rule. This CE was based on a review of previously implemented actions. The Forest Service should ensure that State partners are aware of this CE when implementing projects authorized under Good Neighbor Authority (16 USC 2113a et. seq.).

We strongly support the CE for reclassification of roads as Forest System roads. This issue has been the subject of past litigation and confusion, so the regulation will provide needed clarification. *See All. for the Wild Rockies v. Savage*, 897 F.3d 1025, 1035 (9th Cir. 2018).

The CEs established in 220.5 should be prefaced with a statement that CEs should be the first choice for responsible officials and should be used whenever possible. Generally, responsible officials should be reminded to comply with the directives found in Executive Order 13855 (dated December 21, 2018) when developing their approach to NEPA compliance.

220.6-.7 Environmental Assessment and Decision Notice, Environmental Impact Statement and Record of Decision

Regarding both Section 220.6 (Environmental Assessment and decision notice) and Section 220.7 (Environmental Impact Statement and Record of Decision) (Proposed Rule 84 Fed. Reg. 27558–27559), the Forest Service should incorporate existing CEQ guidance explicitly into its own NEPA procedures. Specifically, 40 CFR 1502.7 states that adequate EISes "should normally be less than 150 pages" and that EISes may range up to 300 pages "for proposals of unusual scope or complexity." Specifically including these existing regulations, which were reiterated by CEQ in March of 2012, will help establish a culture of efficiency and focus in NEPA work within the Forest Service. Likewise, for both EA's and EISes, the Forest Service should specifically cite and incorporate CEQ's regulations requiring NEPA documents be written in plain language (40 CFR 1502.1).

We strongly support the direction provided for alternatives in Section 220.7 regarding preparation of EISes (Proposed Rule, 84 Fed. Reg. at 27,558–59). As noted, the action alternatives considered should "meet the purpose and need of the proposed action." We would urge inclusion of language referencing forest plan land management objectives – not simply restrictive land use designations – including suitability for timber production and creation of early seral habitat in the development of alternatives. Alternatives should also meet project objectives as efficiently as possible: for instance, if a project proposes to reduce basal area to a certain level, alternatives which unnecessarily delay accomplishing that level or which would require multiple entries (and likely development of future NEPA analysis) should not be considered.

In addition to this, the Forest Service should place a firm 15-page limit on EAs for projects on Condition Class 2 or 3 lands in order to expedite action. Chapter 40 of the Forest Service's NEPA Handbook (FSH 1909.15) repeatedly uses terms such as "brief," "briefly," and "concise" in the discussion of EAs, as well as references CEQ advice "that [EAs] should be concise and normally not exceed 15 pages" (which is noticeably less constraining than CEQ's actual advice "to keep the length of EAs to not more than approximately 10-15 pages").[6] There are numerous examples of EAs that are hundreds of pages in length. The Forest Service must emphasize the appropriate purpose, level of detail, and length of EAs.

[6] FSH 1909.15 – National Environmental Policy Act Handbook, Chapter 40. "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations – Question 36. 46 Fed. Reg. 18,026 (Mar. 23, 1981).

Proposed Additions to the Final Rule:

While AFRC supports the Proposed Rule per the foregoing comments, we believe that additional CEs should be promulgated, and some existing CEs expanded, in order to give front line forest managers the ability to begin making headway in addressing the myriad forest health crisis facing the National Forest System. These changes will also reduce litigation risk to important forest treatment projects.

Create a managed-stand thinning CE: Develop a CE that permits thinning treatments up to 5,000 acres on previously managed forest stands less than 80 years old.

Clarify existing road maintenance CE: Amend 36 C.F.R. 220.6(d)(4) to make clear that this CE includes the removal of hazard trees within striking distance of National Forest System roads, regardless of whether the trees are included within a commercial timber sale. The Forest Service has a longstanding practice of using this CE to include the removal of hazard or danger trees, as evidenced by its Handbook for Road System Operations and Maintenance. FSH 7709.59 (ch. 40), ¶¶ 41.6, 51.7(f), (g), pp. 7, 9.

Expand existing thinning CE: Amend 36 C.F.R 220(e)(12) (Proposed Rule, 84 Fed. Reg. at 27,556) to increase allowable acreage of live tree harvest from 70 acres to 250 acres and increase the allowable length of temporary road construction from ½ mile to 2 miles.

Clarify Scope of Post-Fire Recovery and stand improvement CEs: Amend 36 C.F.R. 220.6(e)(6) and (e)(11), the existing CEs for post-fire rehabilitation activities of up to 4,200 acres and stand improvement, respectively, to explicitly include a broader range of activities such as commercial timber harvest.

Expand existing salvage CE: Amend 36 C.F.R. 220.6(e)(13) (Proposed Rule, 84 Fed. Reg. at 27,556), to increase allowable acreage of salvage from 250 acres to 1,000 acres and to increase the allowable length of temporary road from ½ mile to 2 miles.

Allow Use of State Exemptions Where Available: Where available, allow the Forest Service to utilize exemptions and expedited procedures found in State law or regulation that would expedite action to recover fiber, restore, and reforest lands damaged during wildfires.

Conclusion: We appreciate the opportunity to comment on these important draft rules. We look forward to commenting further on proposed changes to the Forest Service handbook and other directives that will give forest managers clearer guidance on how to implement some of the new tools provided by the Proposed Rule.

The final rules should take this opportunity to incorporate existing CEQ guidance and regulations which emphasize timeliness, concision, and clarity as key elements of the NEPA process, emphasizing those elements and making them explicit as the dominant approach to NEPA compliance at the Forest Service. The Forest Service should create an expectation that streamlined approaches to NEPA are preferred under existing laws and regulations.

By more fully and explicitly incorporating existing CEQ guidance and regulations into the final NEPA rules as outlined above and strengthening the rule by adding additional CEs and expanding existing ones, the Forest Service can and will accomplish more needed management, on more acres, more quickly. It will also provide higher-quality information to the affected public.

Sincerely,

Travis Joseph, President
American Forest Resource Council

Associated Oregon Loggers
Jerry Brummer, Commissioner, Crook County, Oregon
Douglas Timber Operators
Hampton Lumber
Skamania County, Washington Board of Commissioners
Stimson Lumber Company
Timber Products Company
Washington Contract Loggers Association