
VIA ELECTRONIC FILING

NEPA Services Group
c/o Amy Barker; USDA Forest Service
125 South State Street, Suite 1705
Salt Lake City, UT 84138

RE: National Environmental Policy Act (NEPA) Compliance Proposed Rule, 84 FR 27544 (June 13, 2019); Docket No. FS-2019-0010

Dear Ms. Barker,

The U.S. Chamber of Commerce (“the Chamber”) appreciates the opportunity to comment on the U.S. Department of Agriculture, Forest Service’s proposed revisions to its National Environmental Policy Act (NEPA) regulations. The Chamber supports the goal of increasing efficiency in the Forest Service’s environmental analysis while meeting NEPA’s requirements and honoring its environmental stewardship responsibilities. The Chamber applauds the Forest Service for taking steps to increase the pace and scale of work that would help the Forest Service achieve its mission to sustain the health, diversity, and productivity of U.S. forests and grasslands to meet the needs of present and future generations.

As the Forest Service recognizes in the proposed rule, an increasing percentage of the Agency’s resources have been diverted each year to provide for wildfire suppression, resulting in fewer resources and staff available for other management activities, further necessitating the need for more efficient NEPA decision making. Improvements in NEPA decision making can be made, in part, through the adoption of NEPA categorical exclusions, such as those proposed for the construction and maintenance of oil and natural gas drill sites, pipelines, powerlines, transmission facilities, and other rights-of-way (ROW).

The Chamber supports the adoption of the following proposed categorical exclusions as they would help expedite the construction and maintenance of energy infrastructure and ROW on Forest Service lands. Expanding these proposed categorical exclusions by increasing the limiting factors (acreage, mileage, number of sites) that can be considered under these categorical exclusions would greatly improve the ability of owners of this energy infrastructure to cost effectively construct and maintain these ROW while at the same time satisfying the environmental goals of NEPA. In addition, the Forest Service should create a categorical

exclusion for the use of integrated vegetation management practices on energy infrastructure ROW.

- *36 CFR 220.5(d)(11) – Issuing a new authorization to replace a powerline authorization that is at the end of its term;*
- *36 CFR 220.5(e)(3) - Approval, modification, or continuation of special uses that require less than 20 acres of NFS lands.*
 - (iv) Approving the use of land for a 40-foot utility corridor that crosses four miles of a national forest;*
- *36 CFR 220.5(e)(17) – Approval of a Surface Use Plan of Operations for oil and natural gas exploration and initial development activities, associated with or adjacent to a new oil and/or gas field or area, so long as the approval will not authorize activities in excess of any of the following:*
 - (i) One mile of new road construction;*
 - (ii) One mile of road reconstruction;*
 - (iii) Three miles of individual or collocated pipelines and/or utilities disturbance;*
or
 - (iv) Four drill sites.*
- *36 CFR 220.5(e)(3) – Categories of actions for which a project or case file and decision memo are required:*
 - *New electric transmission and distribution line construction;*
 - *Replacement, relocation, and upgrades to existing transmission lines and towers;*
 - *New construction of natural gas pipelines;*
 - *Maintenance and replacement of existing natural gas pipelines;*
 - *Vegetation management that is incidental to the above activities.*

I. Streamline NEPA Reviews to Spur Economic Growth While Ensuring Environmental Protections

In recent years, there has been a tremendous transformation in how agencies conduct environmental reviews of projects and how information is developed, shared, and analyzed in support of agency NEPA decisions. Environmental reviews and authorizations – including NEPA reviews – often become untethered to the scope and requirements for review and instead serve as unnecessary barriers to important energy and infrastructure projects.

The NEPA project review times needed to complete an EIS have become progressively longer and are a tangible example of the increasing burden placed on project applicants. The Council on Environmental Quality (CEQ) recently reviewed hundreds of federal agency EISs issued from 2013 to 2017 and found that the average document length has risen to almost 600



pages.¹ In the Bayonne Bridge elevation project, the environmental review statement ran several thousand pages.² CEQ's NEPA regulations at 40 CFR 1502.7 state that the text of final EISs "shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages."³ The trend of increasing page counts unnecessarily increases the time needed to prepare and assemble materials, is costly, and provides excessive details that do not necessarily help with NEPA decision making.

In addition, the NEPA reviews are taking longer to complete, delaying important business decisions and economic growth. The Port of Savannah's project NEPA review, for example, took fourteen years to complete.⁴ To more comprehensively understand NEPA review times across federal agencies, CEQ recently issued a report showing that the average time that federal agencies take to complete an EIS from the project applicant's initial Notice of Intent announcement to the issuance of the federal agency's Record of Decision is about 4.5 years.⁵ These increasingly long review times can prevent or delay the maintenance, rebuilding, and expanding of energy infrastructure, and can be an unnecessary drain on the economy while forestalling the economic benefits these projects often provide.⁶

It is vitally important to maintain existing and build new electric infrastructure to support continued economic growth and avoid the adverse economic impacts of power outages. EPRI estimated in 2001 that the cost of power outages across all business sectors was upwards of \$164 billion per year.⁷ Recognizing these potential impacts, companies that manage

¹ Council on Environmental Quality, Length of Environmental Impact Statements (2013-2017), July 22, 2019, https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Length_Report_2019-7-22.pdf

² The Bayonne Bridge elevation project – an infrastructure improvement project that was considered to have minimal impacts as compared to the alternative of building a new bridge – resulted in 20,000 pages of analysis and exhibits and at a cost of millions of dollars. Sam Roberts, High Above The Water, But Awash In Red Tape: Long Review Of Bayonne Bridge Project Is Assailed, The New York Times, Jan. 2, 2014, <https://www.nytimes.com/2014/01/03/nyregion/long-review-of-bayonne-bridge-project-is-assailed.html>.

³ CEQ's regulation on page limits applies only to certain sections of the final EIS (purpose and need, alternatives, affected environment, and environmental consequences). 40 CFR 1502.10(d)-(g). CEQ's analysis did not include page counts associated with EIS appendices, which were as high as 6,000 pages for certain EISs.

⁴ The environmental review for the Port of Savannah took 14 years. Philip K. Howard, *Common Good, Two Years Not Ten Years, Redesigning Infrastructure Approvals*, September 2015, <https://www.commongood.org/wp-content/uploads/2017/07/2YearsNot10Years.pdf>.

⁵ Council on Environmental Quality, Environmental Impact Statement Timelines (2010-2017), December 14, 2018, https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timelines_Report_2018-12-14.pdf

⁶ Howard, *Two Years Not Ten Years*, September 2015.

⁷ *The Cost of Power Disturbances to Industrial & Digital Economy Companies*, EPRI, June 29, 2001, <https://energycollection.us/Energy-Reliability/Cost-Power-Disturbances.pdf>

the bulk power system are increasingly investing in ways to reduce the frequency of outages including implementing best practices to effectively manage vegetation on ROW.

The potential economic impact of NEPA decision making has driven different administrations over the last two decades to issue Executive Orders to streamline the permitting process for energy infrastructure on federal lands.

- Executive Order 13855 - Promoting Active Management of America's Forests, Rangelands, and other Federal Lands to Improve Conditions and Reduce Wildfire Risk (December 21, 2018)
- Executive Order 13807 - Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure (August 15, 2017)
- Executive Order 13212 - Actions To Expedite Energy-Related Projects (18 May 2001), amended by EO 13286 (2/28/03) and EO 13302

In the spirit of these Executive Orders, the Chamber supports the Forest Service's efforts to improve the predictability and pace of the federal permitting process by adopting categorical exclusions for the construction and maintenance of pipelines, power lines, transmission facilities, and other rights-of-way.

II. Focus NEPA Reviews on Significant Environmental Impacts

NEPA recognizes the value in focusing agency resources and requires agencies to consider "detailed information concerning significant environmental impacts."⁸ However, agencies and the public have increasingly come to expect project applicants to provide comprehensive and detailed analyses of all issues, without regard to significance. NEPA inappropriately becomes a statute that generates insignificant or irrelevant information, rather than aids agency decision-making.

Not all environmental impacts of projects are significant. The extent of the NEPA analysis should depend on the significance of the potential impact.⁹ However, there is constant pressure on agencies to provide comprehensive analysis of all impacts, regardless of significance or relevance.¹⁰ Refocusing Forest Service reviews of significant environmental impacts would narrow information requests and streamline the NEPA review process.

⁸ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)

⁹ 40 CFR 1502.2(b)

¹⁰ See e.g., *Protect Our Communities Foundation v. Jewell*, 825 F.3d 571, 583 (9th Cir. 2016) (rejecting argument that the Bureau of Land Management was required to comprehensively review the effects of noise on birds at all stages of life)

To achieve this focus, the revisions to the regulations should promote flexible information collection methods. Agencies should rely on available information that is sufficient to be informative of significance, rather than require new project-specific information in all instances. For example, agencies can leverage information generated from prior surveys in similar circumstances as the proposed project to inform the extent of the agency's information gathering. CEQ's regulations should encourage or mandate reuse of relevant analysis and data.

III. Increase the Acreage of the Categorical Exclusion for Approving Land Use for 40-foot Utility Corridors

The Chamber supports the proposed increase in acreage from five acres to 20 acres for the categorical exclusion at 36 CFR 220.5(e)(3)(iv) for special uses of land for 40-ft utility corridor that crosses four miles of national forest. However, the Chamber recommends the agency expand the acreage of the categorical exclusion to the maximum length of prior utility project reviews that demonstrated no significant environmental effect. For example, the Forest Service referenced several utility ROW projects that were for projects considerably greater than 20 acres including:

1. Town of Payson-Cragin Water Treatment Plant and Pipeline Corridor Project Tonto NF, Payson RD that covered 351 acres (72 miles of 40-ft wide ROW).
2. Idaho Power Company Line 328 Project in Boise NF, Cascade and Emmett RDs that covered 329 acres (64 miles of 40-ft wide ROW).
3. American Transmission Company (ATC) - 6904/6905 Powerline Rebuild, Hiawatha NF, St. Ignace RD that covered 147 acres (30 miles of 40-ft wide ROW).
4. APS NO1 Youngs to Mormon Lake 69kV Power Line, Coconino NF that covered 102 acres (21 miles of 40-ft wide ROW).

IV. Increase the Limiting Factors for the Oil and Natural Gas Exploration Surface Use Plan Categorical Exclusion

The Chamber supports the proposed approval of the categorical exclusion at 36 CFR 220.5(e)(17) that would allow for natural gas and oil exploration and initial development activities, associated with or adjacent to a new oil and/or natural gas field or area. As proposed, this categorical exclusion would not authorize activities in excess of any of the following: (i) one mile of new road construction; (ii) one mile of road reconstruction, (iii) three miles of individual or collocated pipelines and/or utilities disturbance; or (iv) four drill sites.

The Chamber recommends the agency increase the imposed limitations, proposed in section 220.5(e)(17), related to the mileage of road construction/reconstruction, mileage of pipeline, and number of drill sites. With respect to categorical exclusions, the agency should



consider the higher values of these limitations to be the maximum value that demonstrated no significant environmental effect either from Forest Service or other federal land management agency projects.

V. Create a Special Uses Categorical Exclusion to Include Integrated Vegetation Management of Utility ROW

The Forest Service referenced in the proposed rule supporting statement titled, “Supplementing 36 CFR Part 220: Proposed Categorical Exclusions For Certain Special Use Projects,” that the Forest Service has substantial experience authorizing special uses that involve minimal acreage. As part of the proposed rule, the agency reviewed the NEPA documentation for 62 recent projects that relate to actions associated with this proposed categorical exclusion and listed several in the supporting statement related to utility ROW. The Chamber requests that the Forest Service include a special use categorical exclusion that allows for the use of integrated vegetation management (IVM). The special use projects that would permit vegetation management for new/replaced/relocated transmission lines and towers and new/maintenance of/replacement of natural gas pipelines would greatly benefit from the effectiveness of IVM.

In a 2016 MOU between the electric utility sector, arborists, and multiple federal agencies, the parties identified IVM practices that could facilitate cost-effective and environmentally sound vegetation management.¹¹ Integrated vegetation management calls for the use of different methods for controlling vegetation including biological, chemical, mechanical, manual, and in some cases controlled burning. These methods may be adapted on a site-specific basis and can generate numerous benefits such as lower overall vegetation management costs, more effective long-term control, and reduced environmental impacts. Part of the goal of IVM is to promote the stable, low-growing plant communities that resist invasion by tall-growing tree species. The MOU formalizes a cooperative approach between federal agencies and private organizations to streamline the management of vegetation near utility infrastructure.

Utilities have the responsibility to manage vegetation on federal land ROW to prevent power outages, wildfires, and ensure access for timely maintenance and construction activities. For high voltage powerlines in particular, power outages can occur when overhead lines stretch or sag onto vegetation due to increased load or changes in ambient conditions such as high air temperature, high winds, or snow/ice build-up. Trees and other vegetation need to be regularly pruned beyond the minimum clearance distance to account for the fact that they continuously

¹¹ *Memorandum of Understanding on Vegetation Management for Powerline Rights-Of-Way*, Edison Electric Institute, Utility Arborist Association, United States Department of Interior (NPS, FWS, BLM), United States Department of Agriculture (FS), and the United States Environmental Protection Agency, September 29, 2016, https://www.eei.org/issuesandpolicy/environment/land/Documents/EEI_MOU_FINAL_Signed_09.29.16.pdf

grow and sway with the wind. Adopting a categorical exclusion for vegetation management that employs IVM will help avoid the undesirable impacts of large-scale grid failures due to the presence of undesirable vegetation within powerline ROW.

In addition to meeting NEPA's environmental requirements for maintaining energy infrastructure ROW on federal lands, there are other federal standards that drive these efforts as well. The Federal Energy Regulatory Commission (FERC) has approved reliability standards imposing vegetation management requirements on owners of high voltage transmission lines.¹² Following the 2003 blackout, the Energy Policy Act of 2005 granted FERC the authority to review, approve, and enforce mandatory reliability standards. FERC designated the North American Electric Reliability Corporation (NERC) as the Electric Reliability Organization to establish the reliability standards. NERC developed vegetation standards for ROW and now enforces them to ensure the reliability of the transmission of electric power across high voltage lines.¹³ Utilities can be fined as much as \$1 million per day for outages attributed to overgrown vegetation making the use of vegetation management an important tool in complying with these federal reliability requirements.

IVM can also be utilized, consistent with EO 13751, to prevent the introduction, establishment, and spread of invasive species. Certain methods of chemical control can target specific invasive vegetation in a manner that is cost-effective and minimizes human, animal, plant, and environmental health risks. These herbicides can provide for the restoration of native species, ecosystems, and other assets that have been impacted by invasive species on energy infrastructure ROW.

Energy infrastructure ROW are increasingly important for wildlife habitat as IVM can create natural, diverse, and sustaining ecosystems, such as a meadow transition habitat. These transition landscapes, in turn, reduce wildlife habitat fragmentation and allow species to be geographically diverse, remaining in areas from which they might otherwise be excluded. A variety of wildlife species (including threatened and endangered species) consider these habitats home such as songbirds, small mammals, and deer. These wildlife habitats are

¹² The nation's electric system is divided into two different domains for regulatory purposes, largely based on the voltage of the facilities: high voltage transmission lines and lower voltage distribution lines. High voltage transmission lines operated above 200,000 volts (200 kV) and some transmission lines between 100 kV-200 kV are subject to NERC's Reliability Standard FAC-003-4. These transmission lines are typically those on high steel towers or very large wooden structures with multiple lines. Lower voltage distribution lines are generally those lines below 100 kV.

¹³ NERC Standard FAC-003-4, Transmission Vegetation Management, October 1, 2016, <https://www.nerc.com/pa/Stand/Reliability%20Standards/FAC-003-4.pdf>

especially beneficial to pollinators such as the monarch butterfly that migrate between Mexico and Canada using the ROW.¹⁴

Due to the extensive engagement of the private and public entities in establishing the integrated vegetation management MOU, the actions covered by IVM are not expected to substantially differ in the future. In fact, if the vegetation management practices were appropriately applied, it could have the effect of reducing environmental impacts caused by invasive species outcompeting native species and reduce the risk of catastrophic wildfires associated with these ROW.

In July of this year, the Forest Service issued a draft decision notice and Finding of No Significant Impact (FONSI) for Pacific Gas and Electric Company's (PG&E) use of IVM, which includes the use of herbicides and mastication.¹⁵ The IVM program will assist PG&E with ongoing routine vegetation maintenance activities within five existing electric transmission line ROW in the Eldorado National Forest and will cover over 600 acres of which 450 acres will involve the use of herbicides. The Forest Service determined that the IVM method of vegetation management would pose a lower risk of contact with transmission lines by using herbicides to produce a tree-resistant and low-growing native plant species in transmission line ROW.

There are thousands of miles of energy ROW on Forest Service land that support vital energy services integral to America's security, safety, economy, and welfare. The inclusion of IVM as a categorical exclusion would permit the efficient and cost effective management of utility ROW on Forest Service land.

VI. Conclusion

The Chamber supports the Forest Service's efforts in the proposed rule to increase the efficiency of the agency's environmental analysis under NEPA recognizing both the shifting resources within the agency and the need to expedite the construction and maintenance of energy infrastructure on Forest Service lands. The proposed categorical exclusions should be expanded by increasing the limiting factors (acreage, mileage, number of sites) that can be considered under the categorical exclusions and should add a new categorical exclusion that incorporates IVM practices for utility ROW.

¹⁴ Integrated Vegetation Management a Plus for Pollinators and Pipelines, Penn State Extension, July 10, 2018, <https://extension.psu.edu/integrated-vegetation-management-a-plus-for-pollinators-and-pipelines>

¹⁵ *Draft Decision Notice and Finding of No Significant Impact*, Pacific Gas and Electric Company's Integrated Vegetation Management (IVM) Program for Transmission Line Rights-of-Way, US Forest Service, Eldorado National Forest, July 10, 2019, https://www.fs.usda.gov/nfs/11558/www/nepa/105558_FSPLT3_4661204.pdf

The Chamber appreciates the opportunity to comment on the Forest Service's proposed rule. If you have any questions or need more information please do not hesitate to contact me at (202) 463-5582 or at cguith@uschamber.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher Guith". The signature is fluid and cursive, with the first name "Chris" and last name "Guith" clearly visible.

Christopher Guith

