

BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE

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Comments on Proposed Revisions to U.S.D.A. Forest Service National Environmental Policy Act (NEPA) Regulations

I am submitting comments on behalf of the Blue Ridge Environmental Defense League (BREDL) based in Glendale Springs, NC. BREDL is a regional, community-based, non-profit environmental organization founded in March 1984. Our founding principles are earth stewardship, environmental democracy, social justice, and community empowerment. BREDL has chapters and members throughout the Southeast. Our members rely on the recreational use, scientific attributes and life-sustaining benefits of our National Forests.

Thank you for the comment deadline extension to August 26, 2019.¹ BREDL strongly adheres to the fact that National Forests are indeed our – the citizens’ – National Forests. Thus, we have the right to provide input on how they are managed. After reading the Forest Service proposed NEPA Revisions, we can only imagine an agency name change to The Big Foist Service – with all apologies to the Minutemen punk band – is just around the corner.

Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.² The First Amendment of the U.S. Constitution guarantees the right of citizens to assemble peaceably and to petition their government. Attorney Lori Potter once wrote, “ In a representative democracy, public participation is the cornerstone of the system; it is a bedrock principle that connects government to the governed. It legitimizes the system and helps to make government accountable.”³

¹ <https://www.fs.fed.us/news/releases/usda-forest-service-extends-comment-period-draft-regulations-management-national>

² The National Environmental Policy Act of 1969, as amended Sec. 101 [42 USC § 4331].(c)

³ Attorney with Kelly, Haglund, Garnsey & Kahn; First Amendment article on firstamendmentcenter.org

The Forest Service's very own motto is "Caring for the land and serving people."⁴ The Forest Service further states that this includes "Listening to people and responding to their diverse needs in making decisions."

Despite your efforts to collaborate with the Council on Environmental Quality on these proposed regulations, you have failed to consider the CEQ principle regulations for implementing NEPA "to make sure that federal agencies act according to the letter and the spirit of the Act." These proposed revisions to the Forest Service NEPA regulations do not, as stipulated in the CEQ regulations, "ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken."⁵

We are adamantly opposed to changes with §220.4 General requirements. Paragraphs (d) and (e). Currently, Section Paragraph (e) (1) states " Scoping is required for all Forest Service proposed actions, including those that would appear to be categorically excluded from further analysis and documentation in an EA or an EIS." The proposed NEPA change would limit public notice and scoping to only proposed actions that will be documented with a decision memo, EA or EIS.

The Notice for this Proposed Action states, "The Proposed rule outlines an approach for 'right-sizing' the public engagement and scoping processes to each proposed action." We would strongly disagree. The proposed rule, rather than right-sizing public engagement appears to be capsizing that engagement.

Your ill-advised proposal continues by adding a new paragraph "Determination of NEPA Adequacy". There is no need to water down - actually eliminate the public participation process with this section. This process is already built in to the NEPA process.

The Forest Service should welcome increased public participation. The agency should not be proposing policy changes to hamper the public's ability to provide input. The public, especially the local citizens, often provide feedback on projects that better the outcome for all parties involved. In addition, the NEPA process can provide a way for all interested parties to reach a compromise that reduces citizen and community tensions. A chance to be heard goes along way.

Those who live near the affected forest or recreate there are often more knowledgeable about that environment than agency personnel. I have known several citizens, including local scientists, who have catalogued the flora and fauna for various national forest areas. Their efforts have surpassed any undertaken by U.S. Forest Service personnel. This is especially important now as the Forest Service stated they are working on reduced funding and personnel. Once again, the agency should be encouraging our participation.

Local trust in the forest service could be severely diminished if projects are implemented without citizen input and knowledge of project plans. The Proposed NEPA revisions may have the unattended consequence of increased protests and acts of civil disobedience. The public may decide this is the only way to have its voice heard.

Condition-based management is so wide open to interpretation, it appears to be destined for failure. If the proposed changes were genuinely focused on improved public engagement, you would realize that part of your very definition ("Condition-based management stems from the recognition that the environment is dynamic, changing as ecosystems respond to changing natural and human-cause events.") calls for continued public participation and examination of projects – each and every time. Your proposal to limit public participation is an affront to the very founding principals of the USFS.

⁴ <https://www.fs.fed.us/about-agency/what-we-believe>

⁵ Council on Environmental Quality Regulations for implementing the National Environmental Policy Act, as amended, 40 CFR 1500.1

Setting and expanding a blanket for categorical exclusions will not be beneficial to the forest's health. Each project has unique issues and may severely impact the public's continued use of that portion of forest. Interested parties should always have the opportunity to weigh in on these decisions. While the categorical exclusions section does need revision, that should be to reduce the actions that are excluded. It should not, as proposed, be used to limit input, science and examination of projects.

Excluding the public will also significantly impact the NEPA regulations that address cumulative impacts.

For over three decades, BREDL Chapters and members have provided critical information and comments on a variety of Forest Service proposals, ranging from highway construction, to natural gas pipelines, clearcut logging, prescribed burns and other special use issues. Our participation has led to a better environment and enhanced forest health in many areas. BREDL and other stakeholder involvement helps the USFS care for the land, and should be encouraged, not discouraged as we see in the proposed changes.

The court system is getting very wise to this onslaught on NEPA. As an April 2019 article reported, "Legal experts who fight to impose stricter reviews say the troubling trend of speedy project approvals means courts will look with more skepticism on reviews the government is conducting under the National Environmental Policy Act.

"It's going to look like a lot of judicial reversals," said Eric Glitzenstein, a founding partner of the public-interest law firm Meyer Glitzenstein & Eubanks LLP. "It's going to mean a lot more situations where agencies are sent back to the drawing boards by the courts and may not give agencies the same level of deference as in the past."⁶

As the article further mentioned the lower courts are requiring more robust studies from agencies. As another legal expert stated, "Regardless of which president tries, the courts don't seem interested in speeding up the NEPA process," said James Coleman, who teaches energy law at Southern Methodist University.

The Forest Service (and every governmental agency) should seek increased – not decreased – public participation, so as to ensure that our knowledge and wisdom and those of the Forest Service are mutually advanced for the good of our cherished National Forests and our Nation. As the fourth President of the United States James Madison once wrote, "The advancement and diffusion of knowledge...is the only guardian of true liberty".

Respectfully submitted,



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⁶ <https://www.eenews.net/stories/1060148569>