

August 26, 2019

Submitted via *Federal eRulemaking Portal* to Docket No: FS-2019-0010

NEPA Services Group  
c/o Amy Barker  
USDA Forest Service  
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Re: Request for Comments on the USDA Forest Service National Environmental Policy Act Compliance Proposed Rule; 84 *Fed. Reg.* 27544 (June 13, 2019)

To Ms. Barker:

The National Rural Electric Cooperative Association (NRECA) submits these comments in response to the request by the U.S. Department of Agriculture (USDA) Forest Service (agency) for public input on its proposed revisions to its National Environmental Policy Act (NEPA) regulations (36 *Fed. Reg.* 220, July 1, 2008). If finalized, these revisions should eliminate inefficient processes, enhance the use of categorical exclusions (CE), and reduce the backlog of special use permits awaiting approval, while increasing the health and productivity of our national forests and grasslands. This is an important step to help restore the over 80 million acres of National Forest System (NFS) land in need of management to reduce the risk of catastrophic wildfire, insect epidemics, and forest diseases.

NRECA is the national trade association representing nearly 900 local electric cooperatives. America's electric cooperatives belong to the communities that they serve and comprise a unique sector of the electric industry. From growing suburbs to remote farming communities, electric cooperatives power 1 in 8 Americans and serve as engines of economic development for 42 million Americans across 56 percent of the nation's landscape.

NRECA's member cooperatives include 62 generation and transmission (G&T) cooperatives and 831 distribution cooperatives. The G&Ts generate and transmit power to distribution cooperatives that provide it to the end of line co-op consumer-members. Collectively, cooperative G&Ts generate and transmit power to nearly 80 percent of the distribution cooperatives in the nation. The remaining distribution cooperatives receive power directly from other generation sources within the electric utility sector. Both distribution and G&T cooperatives share an obligation to serve their members by providing safe, reliable, and affordable electric service.

Electric cooperatives play a vital role in transforming the electric sector, including working to improve the resiliency and efficiency of their systems. Altogether, co-ops own and maintain 2.6 million miles or 42 percent of the nation's electric distribution lines. Some of this electric infrastructure, as well as transmission lines, substations, communication sites, access roads, and restoration projects are located on NFS lands.

Thus, co-ops must acquire special use authorizations and comply with NEPA to access electric utility rights-of-way (ROW), as well as complete necessary facility inspection, vegetation management, and operation and maintenance (O&M) activities.

NEPA environmental reviews and documentation requirements often add significant delays, costs, and liability for co-ops awaiting agency decisions on new special use permits and renewals or amendments to existing authorizations. The agency currently has a backlog of more than 5,000 applications in need of environmental analysis and decision, on top of the approximately 3,000 new special use permit applications that are submitted annually for approval. Timely approvals – especially with the increase in catastrophic wildfires – are essential for co-ops to meet mandatory reliability standards, ensure a proper functioning energy grid, and reduce the potential risk of wildfire. Therefore, it is important to NRECA and its members that revisions to the USDA Forest Service NEPA regulations improve decision-making efficiency and streamline documentation requirements.

NRECA supports the USDA Forest Service's efforts to modernize its procedures to increase efficiency of environmental analyses and produce higher quality, science-based decisions consistent with NEPA's requirements. More specifically, we support the proposed series of new and revised CEs, which will improve electric cooperatives' ability to operate and maintain electric infrastructure located on NFS land. For example, NRECA encourages the agency to finalize the proposed new CE, which combines two existing CEs, regarding the renewal of existing authorizations when renewals are purely clerical and there are no substantive changes to the scope of authorized activities as it will increase efficiency and reduce the backlog of expiring or expired special use authorizations.<sup>1</sup> NRECA respectfully provides the following additional comments to enhance the use of CEs.<sup>2</sup>

### **Clarify that Existing Access Roads are Categorically Excluded.**

To access their ROWs, electric co-ops must utilize and maintain a system of existing roads, off-highway vehicle (OHV) routes, and foot trails. NRECA recommends the agency explicitly state these ROW access points are included in the existing CE found at §220.5(d)(11)(i) for issuing a new authorization to replace a powerline authorization that is at the end of its term. This will help provide clarity and consistency, while not exceeding the scope of the original special use authorization. Therefore, no project or case file and associated decision memo should be required. The inclusion of access roads is also consistent with the existing CE found at §220.5(d)(12), which allows for the issuance of a new authorization or amendment of an existing authorization for activities that occur on existing roads or trails.

### **Add CE to Cover Routine O&M Activities.**

The ability to perform routine O&M activities is necessary for electric co-ops to provide safe, reliable electric service. This includes, but is not limited to actions such as modifying, repairing, maintaining, or upgrading existing electric infrastructure; adding or replacing equipment (e.g., breakers, transformers, switches); pole replacements; reconductoring; and access road improvements. These activities are typically minor in scope and temporarily occur within or immediately adjacent to previously disturbed ROWs containing already constructed and permitted electric infrastructure. Therefore, routine O&M activities are

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<sup>1</sup> 36 CFR 220.5(d)(11).

<sup>2</sup> Also suggested in NRECA comment letter submitted February 2, 2018 on the Forest Service advance notice of proposed rulemaking to revise its National Environmental Policy Act procedures; 83 *Fed. Reg.* 302 (January 3, 2018).

unlikely, either individually or cumulatively, to have significant environmental impacts. NRECA recommends the agency include routine O&M activities as a category of actions that are CE under §220.5(d). Specifically, the CE should cover the modification, removal, repair, maintenance, reconstruction, or replacement of a facility or improvement for an existing special use authorization.

### **Add CE to Cover Routine Vegetation Management Practices.**

Like O&M activities, routine vegetation management is essential for maintaining reliability of the energy grid and mitigating wildfire risk. Failure to properly manage vegetation may cause wildfires, lead to power outages, and jeopardize the physical integrity of transmission and distribution infrastructure. It may also risk the health and safety of workers who build and maintain such facilities, those who are called upon to fight an increasing number of forest fires, and surrounding communities. Some electric cooperatives are subject to fines for violations of mandatory reliability standards for vegetation management developed by the North American Electric Reliability Corporation (NERC) and approved by the Federal Energy Regulatory Commission (FERC).

The Consolidated Appropriations Act of 2018 (FY18 Omnibus Bill) amended the Federal Land Planning Management Act (FLPMA) to provide for the long-term, cost-effective, efficient, and timely management of electric utility facilities and vegetation to enhance electric reliability, promote public safety, and avoid fire hazards. Further, the FY18 Omnibus Bill directs the agency to identify actions associated with the development and approval of vegetation management plans and agreements, as well as actions carried out under such approvals, that could be categorically excluded under NEPA. These provisions are a positive step for electric co-ops as they work to enhance the quality of life in rural communities across the nation while also emphasizing the need to continue to pursue innovative solutions for future energy and economic needs.

Electric co-ops perform routine vegetation management activities such as manual or non-mechanical removal of trees and other vegetation; controlled burning; mechanical treatment including mowing, pruning, and bush hogging; herbicide application; and planting of native shrubs and grasses for restoration. Erosion controls and access road improvements may also be included. These activities are usually minor in scope, have limited environmental effects, and address maintenance of already permitted, constructed and previously disturbed ROWs. Therefore, vegetation management activities are unlikely, either individually or cumulatively, to have significant environmental impacts. NRECA recommends the agency include vegetation management activities as a category of actions that are categorically excluded under §220.5(d). Specifically, the CE should cover the approval of vegetation management plans and agreements, as well as the vegetation management activities done in accordance with such approved plans or agreements.

### **Expand CE to Allow Selective Low-Volume Pesticide Use for Vegetation Control.**

Selective low-volume pesticide use, including herbicides, is an effective vegetation management strategy to treat and control vegetation incompatible with the safe and reliable operation of electric infrastructure. The option to selectively use pesticides as a treatment in the vegetation management “toolbox” allows electric co-ops the ability to better eradicate problematic vegetation including invasive species, reduce fuel loads, and promote more compatible plant communities.<sup>3</sup>

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<sup>3</sup> Mahan, C.. Floral and Faunal Research on Utility Rights-of-Way at Game Lands 33 and Green Lane Research and Demonstrations Areas, Penn State University, Altona, PA. 2018.

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The application of selective low-volume pesticides is typically performed by certified applicators on foot using backpack sprayers. This is also done in accordance with product labels to comply with the Environmental Protection Agency's (EPA) Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requirements. In many cases, this method minimizes the amount of site disturbance. Each subsequent treatment becomes more selective, resulting in even less site disturbance over the long term.

Overall, the use of selective low-volume pesticides is usually minor in scope, has limited and short-term environmental effects, and addresses maintenance of already permitted, constructed and previously disturbed ROWs. Therefore, selective low-volume pesticide use is unlikely, either individually or cumulatively, to have significant environmental impacts. NRECA recommends the agency include a CE at 220.5(d) to allow the application of registered pesticides for vegetation control under new and existing special use authorizations for electric infrastructure. This is consistent with the existing CE found at §220.5(d)(3)(iv), which allows the agency to repair and maintain administrative sites using registered pesticides for rodent and vegetation control. The inclusion of such a CE will better facilitate electric co-ops' ability to efficiently and cost-effectively perform vegetation management to ensure system reliability and mitigate wildfire risk.

## **Conclusion**

NRECA appreciates the opportunity to provide comments on ways the USDA Forest Service can reform its regulations to increase the efficiency and effectiveness of the NEPA process. NRECA and its members believe that the abovementioned revisions will enable the continued protection of the nation's forests and grasslands, while contributing to the economic health of rural communities through more consistent and timely completion of environmental reviews and approvals. In conjunction with this rulemaking, we encourage the agency to update its directives, specifically the Forest Service Handbook 1909.15 and Forest Service Manual 1950, to ensure alignment with the NEPA compliance rule, if finalized. We welcome a chance to discuss our recommendations further with your team and look forward to continuing to work with the agency to improve its NEPA compliance obligations.

If you have any questions regarding these comments, please contact me at [Janelle.Lemen@nreca.coop](mailto:Janelle.Lemen@nreca.coop).

Respectfully,



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