

12 September 2021

Meryl Harrell, Deputy Under Secretary:  
– Natural Resources and Environment, USDA  
1400 Independence Ave. SW – Suite 202-W  
Washington, DC 20250

attn: Randy Moore, USFS Chief

**Renewed Petition for CFR Amendment**

Ms. Harrell and Concerned Staff:

In June 2018 we submitted a proposal to revise the USFS 'Noncommercial Group Use' rules and related special use provisions (36 CFR 251.50- 251.56):

"PETITION TO AMEND A NATIONAL FOREST REGULATION"

- *That Petition is appended in full, and hereby re-submitted for proper USDA review.*

The constitutional grounds and scope of this proposal were set forth in the Part I opening statement, and are included herein by reference. It is presented once more under the authorities and reserved rights of petition and relief of the Administrative Procedure Act. 5 U.S.C. §553(e).

□ Understand the need to renew this formal Petition in light of the failed procedures of the last administration: After receiving no USDA response for over a year, on 6/21/2019 we sent a *"...Demand for Rulemaking"* with 25 pages of public petitions in support. Five months later a brief letter was issued by the Director for Recreation, Heritage, and Volunteer Services, summarily *"...denying your petition for rulemaking."* This decision was negligent and in plain error –

– *the pretext of prior court rulings uniformly upholding these rules is both untrue and improper.* The APA Petition is a distinct avenue for redress of grievous policies, apart from judicial remedies, requiring *de novo* review on the merits and mandating Agency proceedings in accord.

That pretext is disproved; no real review was conducted – and again, the APA *"right to petition"* is not a discretionary matter, and this callow dismissal stands in violation. 5 U.S.C. §553(b),(c),(e).

□ This initiative also answers the devolving situation under the 'Group Use' regulation: In 2010, in the wake of bad press and court cases unraveling the permit scheme, USFS officials moved to Operating Plans to authorize the Rainbow Gatherings, avoiding further conflict and litigation they would lose. But now they have adopted a new device, issuing *"Design Criteria"* documents to impose 'Group' conditions while withholding authorization –

– *as a result, every Gathering without a signed permit is once again declared "Illegal".* The political trap is obvious: Attendees are lulled by false forbearance, while Incident Command reinstates the permit demand and builds a damning record of noncompliant 'Rainbow' events.

Operating Plans are a lawful means of special use authorization... *'Design Criteria' are not*, and only serve Agency pretenses of fair regulation while criminalizing these assemblies. 36 CFR 261.1a.

□ It is important to be clear on Department protocols for such proposed CFR amendments: This Petition goes properly to the Office of Natural Resources and Environment; the Deputy Under Secretary is responsible for its proper review in accord with APA and Agency mandates, and has reasonable discretion on how such proceedings are staffed and handled. Understandably the new Administration must also rebuild USDA capacities after disruptions of the last few years –

– *Part V of the Petition lays out the key rules & options... 'EXPEDITING THE RULEMAKING PROCESS'*. The work is guided by FSM 1013, setting forth the authorities & scope of Forest Service regulatory actions, and subject to Departmental procedures and standards of review under DR 1512-1.

The right preparations will assure that the vested policy review team is competently composed, and that the Process is conducted with transparency, due public notice, and in good faith.

Please acknowledge our renewed Petition, and apprise on the policy review path, key staff involved, and reliable contacts. This rulemaking proposal should go to Dr. Homer Wilkes when he comes in as Under Secretary, and progress seamlessly in his care. The full document package is also forwarded in PDF format via email as instructed, to be easily circulated as required.

As stated before, **PCU•Free Assembly Project** is a fitting proponent and partner in this endeavor, mindful of USDA obligations and staff challenges. We can assist on the optimum 'workplan' in accord with Department directives and APA requirements. DR 1512-1, §3d.

This is an opportunity to redress longstanding harms and rebuild workable rules for *public assembly* in the National Forests – sustainable on the ground and under the Constitution.

Our vision is for the 50th Anniversary Rainbow Gathering to convene in June 2022 with a viable Operating Plan, fully authorized under an amended special use regulation as proposed.

We implore your cooperation in this effort, in the highest public interests.

Respectfully submitted:



Scott C. Addison – Coordinator

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ATTACHMENTS:

- ~ PCU•FAP: Demand for Rulemaking (6/21/2019)
- ~ M.MARTIN/USDA: Petition Denied (11/18/2019)

via Certified Mail

M. Harrell, USDA: 7017 2620 0001 1625 5517

R. Moore, USFS: 7017 2620 0001 1625 5524