



October 15, 2007

NEPA Implementation Procedures
C/O Content Analysis Group
1584 South 500 West, Suite 201
Woods Cross, UT 84010

RE: Proposed Forest Service National Environmental Policy Act Procedures (36 CFR 220,
Federal Register August 16, 2007 pp. 45998 – 46009)

Dear Sir/Madam:

We appreciate the opportunity to comment on the Forest Service's proposed rule-making. Please accept these comments on behalf of the Society of American Foresters representing professional foresters from the academic, government, private, and not-for-profit sectors.

We applaud the Forest Service for its commitment and this effort to bring the agency's NEPA process more in line with its decision-making process, and for its emphasis on adaptive management and collaborative processes. These rules reflect movement away from the classic, albeit somewhat obsolete, paradigm of the NEPA document as static and immutable, and provide new means to incorporate the need for change and adjustment resulting from on-the-ground monitoring or scientific progress to be better integrated into the NEPA process.

We note, however, that because administrative rules are inherently more difficult and time consuming to alter than is agency guidance, we would question the Forest Service rationale that these regulations will "facilitate quicker Agency responses to new ideas, new information, procedural requirements, and editorial changes." While recognizing that the proposed rules contain substantive provisions that may indeed lend flexibility to decision-making during the NEPA process, we nonetheless would suggest that converting agency guidance to administrative rules may in fact procedurally reduce the Forest Service's ability to quickly respond to needs for change.

That said, we again express our support for the agency's vision of the EIS and the associated administrative record as a means to illustrate the decision-making process with its various iterations, describing and recording any collaborative efforts that may occur, and making the decision-making process as transparent as possible.

We offer the following specific comments on the text of the rule:

§220.3

Adaptive management: The SAF supports both the inclusion of a definition for adaptive management, and the manner in which the agency has defined the term.

Preliminary Environmental Impact Statement: It is unclear from the definition of this term what role the PEIS will play, why an additional classification of EIS is useful, and how the PEIS and the scoping process will interact. For example, will the PEIS be used to initiate scoping? What level of detail or environmental analysis should be expected in a PEIS? If a responsible official chooses to use one, will this provide an opportunity to challenge the agency to provide additional information that may not actually be warranted at such an early phase in the overall NEPA process?

§220.4

(b) *Emergency responses:* While the SAF recognizes the need for speed in responding to the various events that may impact national forests and the surrounding non-federal lands, including natural disasters, the lack of specificity in the terms “emergency,” “emergency actions,” “immediate impacts,” and “important resources” all conspire to leave the reader largely uncertain when and how this provision might be invoked by the agency. Insofar as a gap in public and stakeholder trust remains a stumbling block to effective collaboration, the SAF would urge the agency to illustrate or otherwise clarify the intent of these provisions in the context of actual management situations.

(c)(2) *Agency Decisionmaking:* It remains unclear to the reader how the enactment of this rule will clarify the coordination or integration of NEPA review and the agency decisionmaking process. The proposal appears to reflect the manner in which the NEPA process has been implemented in the past without addressing the intricacies of how adaptive management or collaboration will contribute. It appears to describe business as usual. The SAF would urge the Forest Service to use this opportunity to the utmost to frame its vision of the NEPA process, as discussed in the Background and Need for Proposal, explicitly within the language of the rule.

(e) *Scoping:* As mentioned earlier, the relationship between the PEIS and scoping remains unclear. Additionally, the purpose for which scoping occurs, or in this case, the purposes for which the Forest Service views and uses scoping, could be articulated to a greater degree. Though we are sensitive to the need for project-specific management flexibility, the public expects a degree of predictability in how projects are commenced and the processes to expect.

(f) *Cumulative Effects Considerations of Past Actions:* The SAF applauds the Forest Service inclusion of a workable definition of cumulative effects. Inclusion of the “relevant and useful” language is also strongly supported. We do raise a question as to how concurrent actions will be treated. As an indirect effect, a cumulative effect, some other way, or not at all?



§220.5(e) *Alternative(s)*: The SAF commends the Forest Service for articulating that “no specific number of alternatives is required or prescribed.” It is, however, unclear how the incremental changes made throughout the planning process will be treated as “alternatives considered.” What level of documentation will be required to treat them as such? The rule mentions incorporation by reference, but to what? The PEIS?

It also appears that the purposes of adaptive management are to some extent negated by the requirements that adjustments to an action be “clearly articulated and pre-specified” and “fully analyzed.” While we applaud the use of an iterative process based in adaptive management as an alternative to the use of a supplemental environmental impact statement, for example, the requirements for pre-project specificity and analysis of the adaptive management strategies to be employed may run counter to the very tenets of adaptive management. Related questions are also raised as to what level of analysis will be required to avoid the need for an SEIS. Will all of the potential effects of the adaptive management strategies require analysis? How speculative will the analysis by necessity be? Finally, it is difficult to understand the requirement in (f) that the EIS include the effects of the adaptive management strategy—how will such a adaptive strategy, designed to evolve over time be fully analyzed in a single EIS?

§220.7 *Environmental Assessment*: The phrase permitting incorporation by reference of information “reasonably available to the public” is inherently ambiguous. Is there an average “public” upon which this standard can be based? While the SAF is strongly supportive on streamlining NEPA procedures where feasible, and is likewise supportive of incorporating scientific information and analyses by reference, this provision may require additional detail.

We again appreciate this opportunity to comment on the Forest Service’s NEPA regulatory proposal. We believe that much of what the agency proposes will move project development and implementation under NEPA in a positive and progressive direction.

Sincerely,

A handwritten signature in cursive script that reads "John P. McMahon".

John P. McMahon
President