

## Forest Service, USDA

## §215.2

### §213.4 Prior rules and regulations superseded.

Except as provided in §213.3, the rules and regulations heretofore issued for the land utilization projects are hereby superseded as to all such projects administered by the Forest Service, but not as to such project lands administered by other agencies.

[27 FR 9217, Sept. 18, 1962]

## PART 215—NOTICE, COMMENT, AND APPEAL PROCEDURES FOR NATIONAL FOREST SYSTEM PROJECTS AND ACTIVITIES

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AUTHORITY: 16 U.S.C. 472, 551; sec. 322, Pub. L. 102-381 (Appeals Reform Act), 106 Stat. 1419 (16 U.S.C. 1612 note).

SOURCE: 68 FR 33595, June 4, 2003, unless otherwise noted.

### §215.1 Purpose and scope.

(a) *Purpose.* The rules of this part have two purposes. First, this part establishes a process by which the public receives notice and is provided an opportunity to comment on proposed actions for projects and activities implementing a land and resource management plan prior to a decision by the Responsible Official. Second, this part establishes an appeal process and identifies the decisions that may be ap-

pealed, who may appeal those decisions, the responsibilities of the participants in an appeal, and the procedures that apply for the prompt disposition of the appeal.

(b) *Scope.* The notice of proposed actions and opportunity to comment provides an opportunity for the public to provide meaningful input prior to the decision on projects and activities implementing land and resource management plans. The rules of this part complement, but do not replace, numerous other opportunities to participate in and influence the agency's project and activity planning, such as those provided by the National Environmental Policy Act of 1969 (NEPA) implementing regulations and procedures at 40 CFR parts 1500-1508, the National Forest Management Act (NFMA) implementing regulations at part 219, and the pertinent requirements at part 216 regarding notice and comment for certain Forest Service Manual (FSM) directives. The appeal process is available to those who submit substantive comments during the comment period. Appeal disposition constitutes the final administrative determination of the United States Department of Agriculture. Throughout this part, references to decisions which affect an authorized use or occupancy of National Forest System lands and meet all other applicable requirements of this part, are subject to appeal by the holders of such authorizations under either this part or part 251, subpart C, but not under both parts. In addition, certain other parties meeting requirements of §251.86 may also be eligible to appeal projects under either this part or part 251, subpart C, but not under both parts.

### §215.2 Definitions.

*Address*—An individual's or organization's current physical mailing address. An e-mail address is insufficient for identification.

*Appeal*—The written document filed with an Appeal Deciding Officer by someone seeking review of a decision.

*Appeal Deciding Officer*—The Secretary of Agriculture (USDA) or the

USDA or Forest Service designee having the delegated authority and responsibility to render a decision on an appeal filed under this part. The Appeal Deciding Officer is the next higher-level supervisor of the Responsible Official.

*Appeal disposition*—Either a written appeal decision or written notification in cases where the original decision is the final agency action and no appeal decision is issued.

*Appeal period*—The 45-calendar-day period following publication of the legal notice in the newspaper of record of a decision during which an appeal may be filed with the Appeal Deciding Officer.

*Appeal record*—The information upon which review of an appeal is conducted, consisting of the transmittal letter, the appeal, decision documentation, the legal notice of decision, the Responsible Official's documentation of the informal disposition meeting, and the Appeal Reviewing Officer's recommendation.

*Appeal Reviewing Officer*—A Forest Service line officer or USDA official who reviews an appeal and makes a written recommendation to the Appeal Deciding Officer on disposition of the appeal.

*Appellant*—An individual or organization filing an appeal who submitted substantive oral or written comments during the comment period on a specific project or activity.

*Categorically excluded (CE)*—Proposed actions, which do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental impact statement (EIS) nor an environmental assessment (EA) is required (40 CFR 1508.4; FSH 1909.15, Chapter 30).

*Comment period*—The 30-calendar-day period following publication of the legal notice in the newspaper of record of a proposed action, during which the public has the opportunity to provide comments to a Responsible Official on a proposed action subject to this part, except for projects requiring an EIS which follow CEQ procedures for notice and comment (40 CFR parts 1503 and 1506.10; FSH 1909.15, Chapter 20). The time period is computed using calendar days, including Saturdays, Sundays,

and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, comments shall be accepted until the end of the next Federal working day.

*Decision documentation*—The Decision Notice (DN) or Record of Decision (ROD) and all relevant environmental and other analysis documentation and records, including all comment letters received, on which the Responsible Official bases a decision under appeal.

*Decision Notice (DN)*—A concise written record of a Responsible Official's decision based on an environmental assessment and a Finding of No Significant Impact (FONSI) (40 CFR 1508.13; FSH 1909.15, Chapter 40).

*Emergency situation*—A situation on National Forest System (NFS) lands for which immediate implementation of all or part of a decision is necessary for relief from hazards threatening human health and safety or natural resources on those NFS or adjacent lands; or that would result in substantial loss of economic value to the Federal Government if implementation of the decision were delayed.

*Environmental Assessment (EA)*—A concise public document that provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement (EIS) or a finding of no significant impact, aids an agency's compliance with the National Environmental Policy Act (NEPA) when no EIS is necessary, and facilitates preparation of a statement when one is necessary (40 CFR 1508.9; FSH 1909.15, Chapter 40).

*Environmental Impact Statement (EIS)*—A detailed written statement as required by section 102(2)(C) of the National Environmental Policy Act of 1969 (40 CFR 1508.11; FSH 1909.15, Chapter 20).

*Finding of No Significant Impact (FONSI)*—A document prepared by a Federal agency presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement, therefore, will not be prepared. It includes the environmental assessment or a summary of it and shall note any

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other environmental documents related to it (40 CFR1508.13; FSH 1909.15, Chapter 40).

*Forest Service line officer*—A Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions subject to this part.

*Lead appellant*—For appeals submitted with multiple names, or having multiple organizations listed, the appellant identified to represent all other appellants for the purposes of communication, written or otherwise, regarding the appeal. The use of the generic term “appellant” applies to lead appellant also.

*Name*—The first and last name of an individual or the name of an organization. An electronic username is insufficient for identification of an individual or organization.

*National Forest System land*—All lands, waters or interests therein administered by the Forest Service (§251.51).

*Newspaper(s) of record*—Those principal newspapers of general circulation annually identified in a list and published in the FEDERAL REGISTER by each Regional Forester to be used for publishing notices of projects and activities implementing land and resource management plans.

*Projects and activities implementing a land and resource management plan*—Site-specific projects and activities, including those for research, on National Forest System lands that are approved in a Decision Notice (DN) or Record of Decision (ROD) by a Forest Service official.

*Proposed action*—A proposal made by the Forest Service that is a project or activity implementing a land and resource management plan on National Forest System lands and is subject to the notice and comment provisions of this part.

*Record of Decision (ROD)*—A document signed by a Responsible Official recording a decision that was preceded by preparation of an environmental impact statement (40 CFR 1505.2; FSH 1909.15, Chapter 20).

*Responsible Official*—The Forest Service employee who has the delegated au-

thority to make and implement a decision subject to this part.

*Substantive comments*—Comments that are within the scope of the proposed action, are specific to the proposed action, have a direct relationship to the proposed action and include supporting reasons for the Responsible Official to consider.

*Transmittal letter*—The Responsible Official’s letter transmitting the decision documentation. The letter shall include only an index of the transmitted documents and identification of those portions of the record that relate to the issues raised.

### **§215.3 Proposed actions subject to legal notice and opportunity to comment.**

The legal notice (§215.5) and opportunity to comment procedures (§215.6) apply only to:

(a) Proposed projects and activities implementing land and resource management plans (§215.2) for which an environmental assessment (EA) is prepared, except hazardous fuel reduction projects conducted under provisions of the Healthy Forests Restoration Act (HFRA), as set out at part 218, subpart A of this title.

(b) Proposed projects and activities described in a draft environmental impact statement (DEIS) for which notice and comment procedures are governed by 40 CFR parts 1500 through 1508, except hazardous fuel reduction projects conducted under provisions of the HFRA, as set out at part 218, subpart A, of this title.

(c) Proposed non-significant amendments to a land and resource management plan (pursuant to the 1982 planning regulations) that are included as part of a decision on a proposed action for which an EA is prepared;

(d) A proposed action resulting in a revision of an EA based on consideration of new information or changed circumstances (FSH 1909.15, Chapter 10, section 18) as provided for in §215.18(b)(1); and

(e) Proposed research activities to be conducted on National Forest System lands.

[68 FR 33595, June 4, 2003, as amended at 69 FR 1533, Jan. 9, 2004]