

DEPARTMENT OF AGRICULTURE**Forest Service****36 CFR Part 215**

RIN 0596-AB89

Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities**AGENCY:** Forest Service, USDA.**ACTION:** Final rule.

SUMMARY: This final rule revises the notice, comment, and appeal procedures for projects and activities implementing land and resource management plans on National Forest System lands. The final rule changes the procedures in the current rule to clarify and reduce the complexity of certain provisions, to improve efficiency of processing appeals, to encourage early and effective public participation in the environmental analysis of projects and activities, and to ensure consistency with the provisions of the statutory authority. Changes address emergency situations; notice and comment procedures and time periods; substantive comments; who may appeal; Deciding Officers; content of an appeal; and the formal disposition process.

EFFECTIVE DATE: This rule is effective June 4, 2003, except for those provisions concerning electronic comments and electronic appeals at 36 CFR 215.5(b)(vi-vii), 215.6(a)(4)(iii), 215.7(b)(2)(i) and (iii), and 215.15(c)(1) and (3), which are effective July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Steve Segovia, Assistant Director for Appeals and Litigation, Ecosystem Management Coordination, telephone (202) 205-1066.

SUPPLEMENTARY INFORMATION:**Background**

The Forest Service is responsible for managing 192 million acres in National Forests, National Grasslands, and other areas known collectively as the National Forest System. The Chief of the Forest Service, through a line organization of regional foresters, forest supervisors and district rangers, manages the surface resources and, in some instances, the subsurface resources of these lands.

The United States Department of Agriculture (Department), at its own discretion, provides processes by which persons or organizations may appeal or object to significant amendment, revision, or approval of a land and resource management plan (36 CFR part 219). For plans prepared using the 1982 planning regulations, Appendix A to

§ 219.35(b) provides the option to select the objection process of § 219.32 or the administrative appeal and review procedures of part 217 in effect prior to November 9, 2000 (see 36 CFR parts 200 to 299, Revised as of July 1, 2000). A separate process for notice, comment, and appeal of National Forest System projects and activities was mandated by section 322 of Interior and Related Agencies Appropriation Act of Fiscal Year 1993 (Pub. L. 102-381, 106 Stat. 1419) (hereinafter "Appeals Reform Act") (ARA)), with implementing regulations promulgated on November 4, 1993 at 36 CFR part 215 (58 FR 58904).

On December 18, 2002, the Forest Service published a proposal to amend the rule at 36 CFR part 215 (67 FR 77451). A 60-day comment period was provided. In addition, the Forest Service gave direct notice of the proposed amendment and invited comment from more than 150 national organizations and Federal agencies. Approximately 25,000 comment letters were received from individuals; representatives of Federal, State, and local government agencies; environmental groups; Indian tribes; professional associations; and both commodity and non-commodity industry groups. The responses were form letters as well as unique individual letters, some sent electronically and others mailed hard copy. All suggestions and comments have been reviewed and considered in preparation of this final rule.

General Comments

Comments were received from those who favored and those who disagreed with the same proposed changes, addressing many of the same issues from opposing viewpoints. Many requests for clarifications were received as well as numerous suggestions for additional changes.

Those who generally supported the proposed rule changes stated that the changes would improve procedural effectiveness and efficiency, reduce the abuse of the appeals process, and improve forest health.

Those who generally opposed the proposed rule changes contended that the changes would reduce a citizen's right to participate in the project planning process, might result in increased litigation, and would decrease forest health.

Comments were received on nearly every section asserting that various portions of the proposed rule were in violation of the Appeals Reform Act (ARA). Rather than answer each ARA violation assertion individually, the Department is choosing to respond

generally. The Department does not believe that any provision, requirement, section, or paragraph is in violation of the ARA. The Department has carried out the intent of Congress with this rule and the changes in the final rule reflect that intent. The preamble to the proposed rule (67 FR 77451, December 18, 2002) contains an extensive discussion of the ARA and the response to the ARA provisions in the development of the 1993 rule (58 FR 58904, November 4, 1993) and the changes proposed to the rule in 2002.

Native American tribes commented on almost every aspect of the proposed rule. The tribes expressed a general concern that the proposed rule failed to recognize particular rights granted under various statutes, treaties, and other legal instruments. They believed that tribal participation in many Forest Service decisions would be greatly reduced by the proposed changes, and that consultation is required to negotiate a process for harmonizing the proposed rule with their concerns. Because the concerns expressed were primarily general in nature, the Department is responding generally, rather than including a response in every section. Native Americans have a special and unique legal and political relationship with the United States government, including the Department of Agriculture and the Forest Service. Tribal governments are sovereign governments that are separate and distinct from other governmental entities. In addition, land and resources hold a special and unique meaning in the spiritual and everyday lives of many Native Americans. National Forest System lands contain many traditional, historic, and contemporary use areas of critical importance to Native Americans. Tribal cultural practices occur commonly on National Forest System lands. Thus, it is critical that the Forest Service respect and work with all tribes in a Government-to-Government relationship during project planning and engage in consultation regarding Government actions affecting tribal rights and interests, consistent with Government policy. However, the Department does not believe it is appropriate to include special provisions relating to tribes in the final rule.

After publication of the proposed rule, the Department became aware of an inconsistency with the use of the terms "substantive comment" and "comment." Respondents noted this inconsistency also. Throughout the final rule, only the phrase "substantive comment(s)" is used, as defined at § 215.2.