

not be included. These comments were referred to appropriate agency officials.

The final rule makes clear in paragraph (a) that if an amendment, revision, or adoption of a land and resource management plan has a project embedded in it, the project decision will be subject to this rule after the appeal/objection process is completed on the land and resource management plan decision. Proposed § 215.11 is designated as § 215.12 in the final rule; paragraph (c) is split and a new paragraph (d) is added; and paragraphs (d) through (g) in the proposed rule are redesignated as (e) through (h) in the final rule.

Proposed section 215.12 designated who can appeal. The proposed revision removed the provision for “interested party” because the Department does not believe the provision fulfills the intent of the ARA.

Comment. Comments both supported and opposed this change. Those supporting the change stated that interested parties should be involved early in project planning. Those opposed believed that this change could lead to more appeals and that it would restrict public involvement. They believed there is no other way for non-appellants to be involved in settlement meetings with appellants. Others said that interested parties provide helpful information to the Reviewing Officer. Some of those commenting believed that the appeal process was a continuation of public involvement. There was a suggestion that parties who receive funding from the Forest Service or who have a contractual involvement with the proposed action should not be allowed to appeal Forest Service decisions.

Response. The ARA provides distinct provisions regarding predecisional notice and comment and post decisional appeal opportunities. The intent is for interested persons to participate early in the project planning process and not wait until after the decision has been issued to become involved. While the appeal process is an opportunity to voice concerns about a decision, it is more advantageous to both the Responsible Official and the public for those who have helpful and important information that could affect a decision, to bring it forward during project planning. The belief that informal disposition meetings between the Responsible Official and an appellant are “settlement agreement meetings” is a misconception. The informal disposition meeting between an appellant(s) and Responsible Official is not for the purpose of making a new decision. Rather, it is an opportunity for the Responsible Official and

appellant(s) to discuss the appeal, agree on facts, and explore opportunities to resolve the issues by means other than formal review and decision on the appeal. As an example, there have been occasions when appellants had a better understanding of the decision after meeting with the Responsible Official and withdrew their appeal.

Proposed section 215.12, paragraph (a) restricted appeal eligibility to those who submitted substantive comments during the comment period and included a provision making it clear that membership in an organization submitting comments on behalf of the organization does not grant appeal eligibility to individuals with membership in that organization.

Comment. Those supporting the change stated that it facilitated the intent of the ARA and strengthened constructive and meaningful public participation. Some respondents suggested that the Forest Service should impose additional requirements for those who wish to appeal. Those opposing the change cited such reasons as substantive comments are not easily defined; it denies “standing” to appeal to persons who submitted comments deemed to be nonsubstantive or “expressed an interest”; and it was not right to not allow individual members of an organization to appeal when the organization submitted comments because the organization represents its members.

Response. The Department believes that an “expression of interest,” such as someone who simply requests a copy of the decision, does not meet the Congressional intent for participation by those who have the “right to appeal” as expressed in the ARA language. This conclusion is based on a reading of those portions of the ARA and the Congressional colloquy regarding the appeal process, which make clear that an individual’s participation in the statutorily mandated public comment period is required to establish standing to appeal. One of the basic goals of this rulemaking was to encourage early and meaningful public participation when it is most useful to the Responsible Official during project planning. The proposed rule restructured both the comment and appeal procedures to encourage early and meaningful public involvement by requiring the submission of substantive comments and linking appeal eligibility to those who submitted substantive comments. The Department believes it is appropriate to require individual members of an organization to meet appeal eligibility standards. The ARA itself does not mention “organizations”;

it makes reference to “a person who was involved in the public comment process.” However, as discussed in the response to similar comments in § 215.5, the Department has always considered an organization the same as a “person.” While the Department believes it is appropriate to accord an organization eligibility to appeal as an organization when it submits substantive comments, it is not appropriate to give individual members in that organization appeal eligibility just because their organization submitted comments.

Proposed section 215.12, paragraph (b) clarified that if an appeal listed multiple names or multiple organizations, each individual or organization listed must meet the test of having submitted comments during the comment period.

Comment. One commenter asked if a new group formed of individuals and groups who provided comments could appeal.

Response. The ability to appeal as a newly formed group rests on whether each member of the group met the comment requirements as individuals during the notice and comment period.

Proposed section 215.12, paragraph (c) does not allow Federal agencies to appeal.

Comment. Those who commented on this paragraph suggested Federal agencies should have the opportunity to appeal under this part.

Response. Other avenues are available to Federal agencies for working through concerns they might have with a proposed action. It is more appropriate, and in fact expected, that the Department and other Federal agencies work cooperatively during project planning.

Proposed section 215.12, paragraph (d) allowed Federal employees to appeal as individuals but limited the information they could use to that information already released to the public.

Comment. One commenter was opposed to the limitation, stating that information available under the Freedom of Information Act (FOIA), even if not released to the public, should be available to Federal employees to use.

Response. The Department agrees, and this was the intent of the proposed paragraph. The final rule clarifies this point. Additionally, the final rule clarifies that the requirements of paragraph (a) of this section must be met also.

In the final rule, proposed section § 215.12 is designated as § 215.13.