

Forest Service, USDA

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(2) The Responsible Official must consider all written comments post-marked or facsimile imprinted by the close of business on the 30th day following publication of the notice (§215.5) and all oral comments received by the close of business on the 30th day following publication of the notice.

(d) The Responsible Official shall address comments received from the public during the comment period in an appendix to the environmental assessment. For proposed timber harvest actions to be categorically excluded from documentation under Forest Service Handbook 1909.15, section 31.2, paragraph 4, public comments and responses to them shall be placed in the project file.

(e) Notes of oral comments received in response to a notice for public comment pursuant to §215.5 shall be placed in the files and addressed pursuant to paragraph (d) of this section.

§215.7 Decisions subject to appeal.

Only the following decisions are subject to appeal under this part:

(a) Project and activity decisions documented in a Record of Decision or Decision Notice, including those which, as a part of the project approval decision, contain a nonsignificant amendment to a National Forest Land and Resource Management Plan (36 CFR 219.10).

(b) Timber harvest project and activity decisions as described in paragraph 4, Section 31.2 of Forest Service Handbook 1909.15 which are documented in a decision memo.

§215.8 Decisions not subject to appeal.

(a) The following decisions are not subject to appeal under this part:

(1) Project or activity decisions included in a Record of Decision for significant amendment, revision, or approval of a land and resource management plan, appeal of which is governed by 36 CFR part 217;

(2) Preliminary findings made during planning and/or analysis processes. Such findings are appealable only upon issuance of a decision document;

(3) Actions for which notice and opportunity to comment have been published and on which no expression of interest has been received during the

comment period (§215.6), and on which the Responsible Official's decision does not modify the proposed action; and

(4) Decisions for actions that have been categorically excluded from documentation in an environmental assessment or environmental impact statement in FSH 1909.15, Section 31.1 and 31.2, except as noted in §215.7(b).

(b) In addition to decisions excluded from appeal by paragraph (a) of this section, the Appeal Deciding Officer shall dismiss any appeal filed on subsequent implementing actions that result from the initial project decision subject to appeal under §215.7. For example, an initial decision to offer a timber sale is appealable under this part; subsequent implementing actions to advertise or award that sales are not appealable under this part.

(c) Decisions solely affecting the business relationship between the Forest Service and holders of written instruments regarding occupancy and use of National Forest System lands can be appealed by permit holders under either 36 CFR part 251, subpart C, or this part, but cannot be appealed under both regulations.

§215.9 Notice of decisions.

(a) *Publication of public notice.* The Responsible Official shall publish a notice of any decision which is subject to notice and comment under §215.3 in a newspaper of general circulation identified pursuant to the requirements of §215.5(a).

(b) *Publication of notice of a decision.* A notice of a decision published pursuant to this section shall:

(1) Include the decision title and a concise description of the action(s) to be taken, the name and title of the Responsible Official, and instructions for obtaining a copy of the decision document;

(2) Except for decisions on which no expression of interest was received during the comment period §215.8(4), state that the decision is subject to appeal pursuant this part and include the following:

(i) State the name and address of the Appeal Deciding Officer with whom an appeal should be filed;

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(ii) Specify that an appeal must be postmarked and submitted to the Appeal Deciding Officer within 45 days of the date of publication in accordance with §215.13;

(3) For those decisions on which no comment was received, state that the decision is not subject to appeal pursuant to §215.8(a)(4).

(c) *Mailing decision documents.* The Responsible Official shall promptly mail the decision document to those who request the specific document and to those who submitted comments on the proposed action either before or during the comment period provided pursuant to §215.6.

§215.10 Implementation of decisions.

(a) If no appeal is filed, implementation of decisions subject to appeal pursuant to this part may occur on, but not before, 5 business days from the close of the appeal filing period.

(b) If an appeal is filed, implementation may not occur for 15 days following the date of appeal disposition. In the event of multiple appeals of the same decision, the date of the disposition of the last appeal controls the implementation date.

(c) If a project is not appealable because, pursuant to §215.8(a)(4), no expression of interest has been received and there is no change from the proposed action, implementation may occur immediately upon publication of the notice of the decision as provided in §215.9.

(d) A project decision is not subject to a stay if the Chief of the Forest Service determines that an emergency situation exists with respect to the decision in accordance with the following provisions of this paragraph:

(1) An emergency, as defined here, is an unexpected event, or a serious occurrence or a situation requiring urgent action. Examples of an emergency include, but are not limited to, the following:

(i) Vegetation loss which presents an immediate threat of flooding or landslide.

(ii) Hazardous or unsafe situations as a result of wildfire or other circumstances.

(iii) Damage to water quality caused by siltation due to fire or flooding.

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(iv) Potential loss of fish and wildlife habitat due to windstorms and blowdowns.

(v) Sudden outbreaks of forest pests and diseases.

(2) The Responsible Official shall notify the public that the Forest Service intends to handle this project as an emergency in the public notice on proposed actions as provided in §215.5(c)(1). Actions responding to emergency situations may be accomplished with force account (Forest Service crews), service contracts or timber sale contracts.

§215.11 Who may participate in appeals.

(a) Except as provided for in paragraph (c) of this section, an appeal pursuant to this part may be filed by any person who, or any non-Federal organization or entity that has met either of the following criteria:

(1) Submitted written comment in response to a project draft Environmental Impact Statement; or

(2) Provided comment or otherwise expressed interest in a particular proposed action by the close of the comment period specified in §215.6.

(b) Persons interested in or potentially affected by an appeal may participate as an interested party, as provided in §215.13(e).

(c) Federal agencies may not participate as appellants or interested parties.

(d) Federal employees filing appeals under this part shall comply with Federal conflict of interest statutes at 18 U.S.C. 202-209 and with employee ethics requirements at 5 CFR part 2635. Specifically, employees shall not be on official duty or use government property or equipment in the preparation or transmittal of an appeal. Employees also shall not use official information not yet released to the public.

[58 FR 58910, Nov. 4, 1993, as amended at 63 FR 4188, Jan. 28, 1998]

§215.12 Where to file appeals.

The Appeal Deciding Officer with whom appeals must be filed are as follows: