

and has not participated in the initial decision and will not be responsible for implementing the initial decision after the appeal is decided.

(b) *Scope of review.* The Appeal Reviewing Officer's review of decisions under this part focuses on decision documentation developed by the Responsible Official in reaching the decision, issues raised in the appeal, and comments submitted by interested parties.

(c) *Consolidation of recommendations.* In cases involving multiple appeals of a decision subject to this part, the Appeal Reviewing Officer shall determine whether to issue one recommendation or separate recommendations.

§ 215.20 Policy in event of judicial proceedings.

Unless waived in a specific case, it is the position of the Department of Agriculture that any filing for Federal judicial review of a decision subject to review under this part is premature and inappropriate unless the plaintiff has first sought to invoke and exhaust the procedures available under this part.

§ 215.21 Applicability and effective date.

(a) The requirements of § 215.5 of this part to provide notice and opportunity to comment on proposed actions described in § 215.3 is effective January 3, 1994.

(b) Decisions for which notice has been given pursuant to 36 CFR 217.5 prior to January 3, 1994, remain subject to the appeal procedures of 36 CFR part 217.

PART 216—INVOLVING THE PUBLIC IN THE FORMULATION OF FOREST SERVICE DIRECTIVES

Sec.

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AUTHORITY: Sec. 14, Forest and Rangeland Renewable Resources Planning Act of 1974, 88 Stat. 476 as amended, 90 Stat. 2949, 2958 (16 U.S.C. 1612).

SOURCE: 49 FR 16993, Apr. 23, 1984, unless otherwise noted.

§ 216.1 Purpose.

This part establishes procedures to ensure that Federal, State, and local governments and the public have adequate notice and opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs.

§ 216.2 Definitions.

(a) The *Forest Service Manual* consists of numerous volumes organized by numerically coded subject matter. The volumes contain legal authorities, responsibilities, delegations, and general instruction and direction needed on a continuous basis by Forest Service officers at more than one unit to plan and execute programs. The parent text is issued by the national headquarters and sets forth the policies, and other guidance applicable Service-wide. National directives are supplemented, as necessary, by Forest Service field offices. Supplements to the Forest Service Manual are applicable only within the Forest Service organizational jurisdiction for which they are issued. The Forest Service Manual is revised to conform to changing law, orders, regulations, or management needs.

(b) *Public participation activities* are actions initiated by the Forest Service to facilitate an exchange of information with the public. These actions include, but are not limited to, oral and written measures such as public notices, letters, discussion papers, and gatherings such as meetings, workshops, and hearings.

(c) *Standards, criteria, and guidelines* means those written policies, instructions, and orders, originated by the Forest Service and issued in the Forest Service Manual which establish the general framework for the management and conduct of Forest Service programs.

§ 216.3 Applicability; relationship to other public participation opportunities.

(a) The requirements described in this part do not apply to—

(1) Rules or regulations promulgated according to the requirements of the Administrative Procedure Act, 5 U.S.C. 553;

(2) Instructions, procedures, and other material issued in Forest Service Handbooks; and

(3) Proposed Manual directives which provide guidance and procedures on administrative support activities such as personnel matters, procurement, service contracting, and other routine business operations of the agency.

(b) This part does not supersede or replace the requirements of the National Environmental Policy Act as set forth in 40 CFR part 1500 and chapter 1950 of the Forest Service Manual. The requirements described in this part do not apply where equivalent public notice and opportunity for comment on the contents of a proposed Manual directive are provided during compliance with NEPA procedures.

(c) The direction for management of many Forest Service programs is developed with public participation during land and resource management planning part 219, and other activities. The relevant results of such public participation shall be used in formulation of Forest Service Manual directives to avoid duplicating public participation efforts.

(d) In addition to the opportunity for formal public review and comment offered in this part, the public may informally review and comment on Manual material at other times.

(e) These regulations do not prevent informal consultation with selected Federal, State, and local governments and the public when such consultation is deemed appropriate in formulating Manual material.

§ 216.4 Determining the need for formal public review of proposed Manual directives.

(a) Agency officials responsible for formulating Manual directives containing applicable standards, criteria, and guidelines shall determine whether substantial public interest or con-

troversy concerning a proposed Manual directive can be expected.

(b) The following shall be considered in making this determination:

(1) Direct written or oral communication with those known to be interested in the proposal;

(2) The degree to which the proposal is likely to adversely or beneficially affect the general public as well as those known to be interested in the proposal;

(3) The amount of change the proposal represents from current direction;

(4) The extent of recent news media coverage on subjects related to the proposal; and

(5) The amount of interest or controversy expressed on previous proposals on the same or similar subjects.

§ 216.5 Documentation.

The responsible Forest Service official shall document the results of the determination made pursuant to § 216.4(b), and the reasons therefor, in a concise written summary. The summary may be combined with documentation required by NEPA procedures or other applicable law or policy. The summary shall be prepared and filed at the same location as the Forest Service official responsible for developing the Manual directive.

§ 216.6 Notice and comment procedures for proposed Manual directives identified for formal public review.

(a) Where it is determined that substantial public interest or controversy concerning a proposed Manual directive can be expected, the following minimum requirements for notifying the public and giving opportunity to comment on the proposal apply:

(1) *National Forest and Ranger District Proposals.* The responsible official shall determine appropriate means of notifying the public. This may include, but is not limited to, legal notice in a newspaper of general circulation or press release. The public shall have a minimum of 30 calendar days to review and comment on the proposal.

(2) *Regional, Station, and Area Proposals.* The responsible official shall determine appropriate means of notifying the public. This may include, but is not

limited to, notice and summary of the proposal in the FEDERAL REGISTER, legal notice in one or more newspapers of general circulation, or press release. The public shall have a minimum of 30 calendar days to review and comment on the proposal.

(3) *National Proposals.* The responsible official shall publish a notice and summary of the proposal in the FEDERAL REGISTER, followed by a minimum of 60 calendar days for public review and comment.

(b) Agency officials will give direct notice to Federal, State, and local governments and to the public known to be interested in the proposal. Along with the notice, the responsible official shall also provide either a complete proposal or a summary of the proposal for review.

(c) The responsible Forest Service official may conduct additional public participation activities related to the proposed Manual directive as are deemed appropriate and necessary.

(d) Comments received from the public shall be analyzed and considered in the formulation and preparation of the final Manual directive.

(e) The final Manual directive or a summary shall be sent to those who offered comments on the proposed directive and further publicized as deemed appropriate by the responsible official.

§216.7 Exemption of proposed Manual directives from normal procedures.

When it is found for good cause that an exigency exists, an interim Manual directive that is determined to be of substantial public interest or expected controversy may be issued in advance of providing opportunity for public comment. However, as soon as practicable after issuance, the interim Manual directive will be made available for public review and comment as described in §216.6. In making the Manual directive available, the responsible official shall state why the interim directive was issued prior to obtaining public comments.

§216.8 Availability of proposed Manual directives identified for formal public review.

As a minimum, review copies of proposed Manual directives determined to

be of substantial public interest or expected controversy shall be available in the Forest Supervisor's Office and District Rangers' Offices when National Forest proposals are involved; in the Regional Office and Forest Supervisors' Offices when regional proposals are involved; and in Regional Offices and National Headquarters when national proposals are involved. When Manual directives involve Forest Service Research or State and Private Forestry programs, review copies shall be available at comparable administrative offices.

PART 217—APPEAL OF REGIONAL GUIDES AND NATIONAL FOREST LAND AND RESOURCE MANAGEMENT PLANS

Sec.

217.1 Purpose and scope.

217.2 Definitions.

217.3 Decisions subject to appeal.

217.4 Decisions not subject to appeal.

217.5 Giving notice of decisions subject to appeal.

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217.7 Levels of appeal.

217.8 Appeal process sequence.

217.9 Content of a notice of appeal.

217.10 Implementation and stays of decisions.

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217.17 Discretionary review.

217.18 Policy in event of judicial proceedings.

217.19 Applicability and effective date.

AUTHORITY: 16 U.S.C. 551, 472.

SOURCE: 54 FR 3357, Jan. 23, 1989, unless otherwise noted.

§217.1 Purpose and scope.

(a) This part provides a process by which a person or organization interested in the management of the National Forest System may administratively appeal decisions to approve, amend, or revise a National Forest land and resource management plan or approve or amend a regional guide prepared pursuant to 36 CFR part 219. This part establishes who may appeal such decisions, the kind of decisions that may be appealed, the responsibilities of