

## § 214.20

Reviewing Officer to determine whether discretionary review of the appeal decision should be conducted.

(2) One day after issuance of a Chief's decision that is eligible for discretionary review under § 214.7(b)(2), the Chief shall send the decision to the Discretionary Reviewing Officer to determine whether discretionary review should be conducted.

(b) *Criteria for determining whether to conduct discretionary review.* In deciding whether to conduct discretionary review, the Discretionary Reviewing Officer should, at a minimum, consider the degree of controversy surrounding the decision, the potential for litigation, and the extent to which the decision establishes precedent or new policy.

(c) *Time period.* Upon receipt of the appeal decision, appeal, and appealable decision or Chief's decision, the Discretionary Reviewing Officer shall have 30 days to determine whether to conduct discretionary review and may request the appeal record or the record related to the Chief's decision during that time to assist in making that determination. If a request for the record is made, it must be transmitted to the Discretionary Reviewing Officer within 5 days.

(d) *Notification.* The Discretionary Reviewing Officer shall notify the parties and the Appeal Deciding Officer in writing of a decision to conduct discretionary review. The Discretionary Reviewing Officer may notify the parties and the Appeal Deciding Officer of a decision not to conduct discretionary review within 30 days. If the Discretionary Reviewing Officer takes no action within 30 days of receipt of the appeal decision, appeal, and appealable decision or Chief's decision, the appeal decision or Chief's decision shall constitute USDA's final administrative decision.

(e) *Scope of discretionary review and issuance of a discretionary review decision.* Discretionary review shall be limited to the record. No additional information shall be considered by the Discretionary Reviewing Officer. The Discretionary Reviewing Officer shall have 30 days to issue a discretionary review decision after notification of the parties and Appeal Deciding Officer has occurred pursuant to § 214.19(d).

## 36 CFR Ch. II (7–1–15 Edition)

The Discretionary Reviewing Officer's decision shall constitute USDA's final administrative decision. If a discretionary review decision is not issued within 30 days following the notification of the decision to conduct discretionary review, the appeal decision or Chief's decision shall constitute USDA's final administrative decision.

### § 214.20 Exhaustion of administrative remedies.

Per 7 U.S.C. 6912(e), judicial review of a decision that is appealable under this part is premature unless the plaintiff has exhausted the administrative remedies under this part.

### § 214.21 Information collection requirements.

The rules of this part governing appeal of decisions relating to occupancy or use of National Forest System lands and resources specify the information that an appellant must provide in an appeal. Therefore, these rules contain information collection requirements as defined in 5 CFR part 1320. These information collection requirements are assigned Office of Management and Budget Control Number 0596–0231.

### § 214.22 Applicability and effective date.

This part prescribes the procedure for administrative review of appealable decisions and Chief's decisions set forth in § 214.4 issued on or after June 5, 2013.

## PART 215 [RESERVED]

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

Sec.

- 216.1 Purpose.
- 216.2 Definitions.
- 216.3 Applicability; relationship to other public participation opportunities.
- 216.4 Determining the need for formal public review on proposed Manual directives.
- 216.5 Documentation.
- 216.6 Notice and comment procedures for proposed Manual directives identified for formal public review.
- 216.7 Exemption of proposed Manual directives from normal procedures.
- 216.8 Availability of proposed Manual directives identified for formal public review.

## Forest Service, USDA

## §216.4

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

## §216.5

substantial public interest or controversy 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

## 36 CFR Ch. II (7-1-15 Edition)

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.

## Forest Service, USDA

## §218.2

### §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 218—PROJECT-LEVEL PREDECISIONAL ADMINISTRATIVE REVIEW PROCESS

### Subpart A—General Provisions

Sec.

- 218.1 Purpose and scope.
- 218.2 Definitions.
- 218.3 Reviewing officer.
- 218.4 Proposed projects and activities not subject to objection.
- 218.5 Who may file an objection.
- 218.6 Computation of time periods.
- 218.7 Giving notice of objection process for proposed projects and activities subject to objection.
- 218.8 Filing an objection.
- 218.9 Evidence of timely filing.
- 218.10 Objections set aside from review.
- 218.11 Resolution of objections.
- 218.12 Timing of project decision.
- 218.13 Secretary's authority.
- 218.14 Judicial proceedings.
- 218.15 Information collection requirements.
- 218.16 Effective dates.

### Subpart B—Provisions Specific to Project-Level Proposals Not Authorized Under the Healthy Forests Restoration Act

- 218.20 Applicability and scope.
- 218.21 Emergency situations.
- 218.22 Proposed projects and activities subject to legal notice and opportunity to comment.
- 218.23 Proposed projects and activities not subject to legal notice and opportunity to comment.
- 218.24 Notification of opportunity to comment on proposed projects and activities.

218.25 Comments on proposed projects and activities.

218.26 Objection time periods.

### Subpart C—Provisions Specific to Proposed Projects Authorized Under the Healthy Forests Restoration Act

218.30 Applicability and scope.

218.31 Authorized hazardous fuel reduction projects subject to objection.

218.32 Objection time periods.

AUTHORITY: Pub. L. 108-148, 117 Stat 1887 (16 U.S.C. 6515 note); Sec. 428, Pub. L. 112-74 125 Stat 1046; Sec. 431, Pub. L. 113-76; Sec. 8006, Pub. L. 113-79.

SOURCE: 78 FR 18497, Mar. 27, 2013, unless otherwise noted.

### Subpart A—General Provisions

#### §218.1 Purpose and scope.

This subpart establishes a predecisional administrative review (hereinafter referred to as "objection") process for proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans documented with a Record of Decision or Decision Notice, including proposed authorized hazardous fuel reduction projects as defined in the Healthy Forests Restoration Act of 2003 (HFRA). The objection process is the sole means by which administrative review of qualifying projects.

(a) This subpart A provides the general provisions of the objection process, including who may file objections to proposed projects and activities, the responsibilities of the participants in an objection, and the procedures that apply for review of the objection.

(b) Subpart B of this part includes provisions that are specific to proposed projects and activities implementing land and resource management plans documented with a Record of Decision or Decision Notice, except those authorized under the HFRA.

(c) Subpart C of this part includes provisions that are specific to proposed hazardous fuel reduction projects authorized under the HFRA.

#### §218.2 Definitions.

The following definitions apply to this part: