



File Code: 1570

Route To:

Date: MAR 05 2014

Subject: Legislation Affecting Notice, Comment, and Appeal of Categorical Exclusions

To: Regional Foresters, Station Directors, Area Director, IITF Director, Deputy Chiefs and WO Directors

On January 17, 2014, the President signed into law the Consolidated Appropriations Act of 2014, Pub. L. No. 113-76, 128 Stat. 5 (2014). Section 431 of that Act directs that the 1993 and 2012 legislation establishing the 36 CFR 215 (post-decisional appeals) and 36 CFR 218 (pre-decisional objections) processes “shall not apply to any project or activity implementing a land and resource management plan ... that is categorically excluded ...under the National Environmental Policy Act [NEPA].”

On February 7, 2014, the President signed into law the Agricultural Act of 2014, Pub. L. No. 113-79 (i.e., Farm Bill). Section 8006(a) of the 2014 Farm Bill repealed the Appeals Reform Act, Pub. L. No. 102-381, 106 Stat. 1419 (1992). Section 8006(b) directs that the pre-decisional objection process established in Section 428 of division E of the Consolidated Appropriation Act of 2012, Pub. L. No. 112-74, shall not be applicable to categorically excluded projects or activities.

After consultation with the Office of the General Counsel, I am issuing the following instructions concerning cessation of operations pursuant to 36 CFR Part 215:

1. Effective immediately, the Forest Service will no longer offer notice, comment and appeal opportunities for categorically excluded projects pursuant to 36 CFR Part 215.
  - The Forest Service will continue to offer public involvement opportunities for categorically excluded projects as provided for in the agency’s NEPA Procedures, see 36 CFR 220.4(d) (SOPA) and 36 CFR 220.4(e) and 220.6(c) (scoping).
  - The Forest Service will continue to provide notice, comment and pre-decisional objections as provided for in 36 CFR Part 218 for projects and activities that rely upon an environmental assessment or environmental impact statement.
2. In order to execute an orderly shutdown of Part 215, the Forest Service will:
  - Immediately cease publication of legal notices pursuant to 36 CFR 215.5 and 215.7.
  - Accept and consider all timely submitted public comments received in response to a Forest Service legal notice issued pursuant to 36 CFR 215.5 that was published on or before the date of these instructions.



- Accept and conduct an appeal review and disposition where legal notice of a decision memorandum was published in the newspaper of record on or prior to the date of these instructions.
- Take steps to remove 36 CFR Part 215 from the Code of Federal Regulations.
- Take steps to amend 36 CFR Part 218 to conform to the legislative mandate that 36 CFR Part 218 shall not apply to projects or activities that are categorically excluded.

For questions regarding this direction, please contact Deb Beighley, EMC Assistant Director for Judicial and Administrative Review, at 202-205-1277, or Joel Strong, National Litigation Coordinator at 202-205-0939.



THOMAS L. TIDWELL  
Chief

