

provisions of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There is no new collection of information contained in this final rule, and, therefore, the Paperwork Reduction Act does not apply. The collections of information of 31 CFR Part 356 have been previously approved by the Office of Management and Budget under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under control number 1535-0112. Under this Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government securities, Securities.

For the reasons set forth in the preamble, 31 CFR chapter II, subchapter B, part 356, is amended as follows:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1-93)

1. The authority citation for part 356 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.*; 12 U.S.C. 391.

2. Section 356.12 is amended by revising paragraph (b)(2) to read as follows:

§ 356.12 Noncompetitive and competitive bidding.

* * * * *

(b) * * *

(2) *Additional restrictions.* Between the date of the offering announcement and the time of the official announcement by the Department of the auction results, a noncompetitive bidder may not hold, at any time, a position for its own account in when-issued trading or in futures or forward contracts in the security being auctioned or enter into any agreement to purchase or sell or otherwise dispose of the securities it is acquiring in the auction. For purposes of this paragraph, futures contracts include those:

- (i) That require delivery of the specific security being auctioned;
- (ii) For which the security being auctioned is one of several securities that may be delivered; or

(iii) That are cash-settled.

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Dated: January 21, 1998.

Donald V. Hammond,

Acting Fiscal Assistant Secretary.

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 215

Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities

AGENCY: Forest Service, USDA.

ACTION: Interim final rule; request for comment.

SUMMARY: The Department is amending the rules governing who can participate in administrative appeals of decisions authorizing National Forest System projects and activities, by removing a prohibition on appeals by Forest Service employees. This regulatory change results from a reassessment of this provision in response to a recent legal challenge. Public comment is invited on this interim rule and will be considered in promulgating a final rule.

DATES: This interim rule is effective January 28, 1998. Comments on this rulemaking must be received by March 30, 1998.

ADDRESSES: Written comments on this rule must be sent to Susan Yonts-Shepard, Appeals Coordinator, National Forest Systems Deputy Area, MAIL STOP 1106, Forest Service, USDA P.O. Box 96090, Washington, DC 20090-9060. All comments, including names and addresses, when provided, will be placed in the record and are made available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: Susan Yonts-Shepard, Forest Service, telephone, (202) 202-1519.

SUPPLEMENTARY INFORMATION:

Background

Section 322 of the 1993 Interior and Related Agencies Appropriations Act directed the Department to establish a process by which persons or organizations receive notice and the opportunity to comment on proposed actions affecting the National Forest System. The Act also required the establishment of procedures by which persons or organizations may appeal decisions subsequently made on proposed actions. Following the

publication of a proposed rule with a request for public comment (58 FR 19369), the Forest Service received over 9,000 comments on certain aspects of this rulemaking. However, no comment was submitted on the proposed provision prohibiting agency employees from participating in the appeal process as appellants or as interested parties at § 215.11(c). Having concluded that there was no concern with this provision, the Department adopted paragraph (c) in § 215.11, without change from the proposed rule, November 4, 1993 (58 FR 58904).

A recent lawsuit brought by a Forest Service employee challenging this regulation (*Dalton v. Forest Service*, Civil Act Number 97-0774, U.S.D.C., D.D.C.) has led to a reassessment of the employee appeal limitation in 36 CFR 215.11(c) and has raised issues not considered at the time of the earlier rulemaking. Moreover, the rulemaking record does not speak directly to the § 215.11(c) provision. Therefore, the Deputy Under Secretary, in a declaration to the court, indicated that the Department would cease immediately to enforce the employee appeal prohibition and would repeal the employee prohibition provision at § 215.11(c). The declaration also indicated that, at a later date, after additional consideration of relevant factors, the Forest Service may decide to publish a new proposed rule to address the matter of appeals by employees. If so, public comment would be requested at that time.

Employees appealing a National Forest System project may violate 18 U.S.C. 208 if their appeal is based upon an imputed financial interest and their official duties involve the appeal. Also, representation of others in the appeal process may be prohibited under 18 U.S.C. 203 and 205. Assuming that an employee appealing a National Forest System project would file the appeal as a private citizen, in accordance with Office of Government Ethics regulations at 5 CFR part 2635, subpart G, Misuse of position, the employee may not be on official duty or use government property or equipment in the preparation or transmittal of an appeal. Also, in preparing the appeal, the employee must not use official information not yet released to the public. A new paragraph (d) has been added to § 215.11 to address the standards of ethical conduct for employees filing an appeal.

Agencies are not required by the Administrative Procedure Act to give notice and opportunity to comment prior to adoption of this interim final rule because the decision to repeal § 215.11(c) involves a matter relating to

agency personnel and, thus, is exempt pursuant to 5 U.S.C. 553(a)(2). However, the Department believes the public should have an opportunity to comment on this rescission before it is adopted as a final rule. Among concerns and questions that reviewers may wish to consider are: the appropriateness and ethical implications of allowing employees to appeal certain Forest Service decisions; the potential impact of employee appeals on the process of permit administration; and the potential impact of allowing employee appeals on the delivery of goods and services from the National Forest System.

Regulatory Impact

This interim final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This action consists of administrative changes to regulations that would allow employee appeals of agency projects and activities under 36 CFR part 215. This interim final rule will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. Also, this rule will not interfere with an action taken or planned by another agency or raise new legal or policy issues. In short, little or no effect on the national economy will result from this interim final rule. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this interim final rule is not subject to OMB review under Executive Order 12866.

Moreover, this interim final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of \$100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Environmental Impact

Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement “rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.” The agency’s assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

No Takings Implications

This interim final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of Constitutionally-protected private property. There are no Constitutionally-protected private property rights to be affected, since the regulation applies only to agency employees.

Civil Justice Reform Act

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This interim final rule (1) preempts all State and local laws and regulations that are in conflict or which would impede its full implementation, (2) has no retroactive effect, and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

Controlling Paperwork Burdens on the Public

This interim final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 215

Administrative practice and procedures, National forests.

Therefore, for the reasons set forth in the preamble, part 215 of Title 36 of the Code of Federal Regulations is amended, as follows:

PART 215—NOTICE, COMMENT, AND APPEAL PROCEDURES FOR NATIONAL FOREST SYSTEM PROJECTS AND ACTIVITIES

1. The authority citation for part 215 continues to read as follows:

Authority: 16 U.S.C. 472, 551; sec. 322, Pub. L. 102–381, 106 Stat. 1419 (16 U.S.C. 1612 note).

§ 215.11 [Amended]

2. Amend § 215.11 to revise paragraph (c) and add a new paragraph (d) to read as follows:

§ 215.11 Who may participate in appeals.

* * * * *

(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.

Dated: January 22, 1998.

Brian Eliot Burke,

Deputy Under Secretary, Natural Resources and Environment.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH58–1a; FRL–5954–6]

Approval and Promulgation of State Implementation Plan; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, EPA is approving as a revision to the Ohio State Implementation Plan (SIP) a rate-of-progress plan for the purpose of reducing volatile organic compounds (VOC) emissions in the Ohio portion of the Cincinnati-Hamilton area by 15 percent by November 15, 1996. The plan and regulations will help to protect the public’s health and welfare by reducing the VOC emissions that contribute to the formation of ground-level ozone, commonly known as urban smog. Elsewhere in this **Federal Register**, EPA is proposing approval and soliciting comment on this action; if written