



Response to comments on Final 36 CFR Part 216

The Forest Service received 74 comments on final 36 CFR Part 216. The comments that are germane and substantive are discussed below. A record of all comments received on the final rule can be accessed via <https://www.fs.usda.gov/about-agency/regulations-policies>.

Support for final rule

Comments in support of the final rule were received. In particular, these comments supported increased accessibility to the Forest Service Directive System, the use of an internet-based public notice and comment system, broadening the range of directives subject to public notice and comment, and increased transparency in the development of Forest Service directives.

Use of Forest Service website

Comments were received on the use of the Forest Service website to post notices of availability of directives for public comment and to view and post comments on directives.

Proposed directives in Forest Service Handbook (FSH) 1109.12, Chapter 30, will address in more detail use of the Forest Service website for public notice and comment on directives. These proposed directives will be published for public comment.

Notification of availability of directives for public comment

Comments were received on notification of availability of directives for public comment. Commenters requested continued use of the *Federal Register*, mailing of a schedule, and use of local media for this purpose. In addition, a commenter requested reinsertion of language from prior 36 CFR Part 216 providing for “direct notice to Federal, State, and local governments and to the public known to be interested in the proposal....”

Notification of availability of directives for public comment will be addressed in the proposed directives in FSH 1109.12, Chapter 30, which will be published for public comment.

Process for commenting and responding to comments

Comments were received on the process for commenting and responding to comments. Commenters requested a physical mailing address for submitting comments and a response to all substantive comments. The process for commenting and responding to comments on proposed and interim directives will be addressed in the proposed directives in FSH 1109.12, Chapter 30, which will be published for public comment.

Length of comment period

Comments were received on the adequacy of the comment period.

Final 36 CFR Part 216 provides for a minimum comment period of 30 days. The length of the comment period will be further addressed in the proposed directives in FSH 1109.12, Chapter 30, which will be published for public comment.

Tribal consultation





A comment was received on the consistency of final 36 CFR Part 216 with Executive Order 13175 on tribal consultation.

Tribal consultation on final 36 CFR Part 216 was completed as described in 83 FR 13646, consistent with Executive Order 13175.

Definition of a directive

One commenter noted that the definition of a directive in 36 CFR 216.2, which is limited to directives issued “by the Office of the Chief,” is too narrow, since field officials issue directive supplements that may require public notice and opportunity to comment.

The Department agrees. The Department has removed the phrase “by the Office of the Chief” from §216.2 consistent with existing regulations at 36 CFR 200.4(c), which provide for directive supplements issued by certain field officials, as well as national directives issued by the Chief. This technical correction clarifies that final 36 CFR Part 216 applies to directive supplements, as well as to national directives. The Forest Service published this technical correction in the Federal Register on [date] (XX FR XXXXX0).

Coordination with States

One commenter stated that final 36 CFR Part 216 should provide a timeline and process for (1) collaboration between the Forest Service and state wildlife agencies on development of guidance that identifies state jurisdictional or shared jurisdictional wildlife species; and (2) collaboration and conflict resolution between the Forest Service and state wildlife agencies before the release of any final planning documents with potential to have an impact on state jurisdictional authorities and ability to manage wildlife on public lands.

This comment relates to land management planning, which is not the subject of this rulemaking. Final 36 CFR Part 216 provides for public notice and opportunity to comment on Forest Service directives that formulate standards, criteria, and guidelines applicable to Forest Service programs. Furthermore, final 36 CFR Part 216 defines “directive” as “the contents of the Forest Service Manual and Forest Service Handbooks, as described at 36 CFR 200.4(c).” Directives are not land management plans. Engagement with states in connection with proposed and interim directives will be addressed in the proposed directives in FSH 1109.12, Chapter 30, which will be published for public comment.

One commenter stated that final 36 CFR Part 216 should provide for state agency concurrence with the Forest Service’s finding of good cause that an exigency exists prior to issuance of interim directives.

Section 14(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (FRRRPA) (16 U.S.C. 1612(a)) requires public notice and opportunity to comment on “formulation of standards, criteria, and guidelines applicable to Forest Service programs.” However, section 14(a) of the FRRRPA does not specify any procedures for providing public notice and opportunity to comment, much less address the





standards for issuance of interim directives prior to public comment. Like its predecessor, final 36 CFR Part 216 provides for issuance of an interim directive, effective immediately, upon a finding by the Forest Service of good cause that an exigency exists. Under final 36 CFR Part 216, notice and opportunity for public comment must be provided before an interim directive is made final. The basis for the agency's finding of good cause that an exigency exists for the issuance of an interim directive must be published at the time the interim directive is issued. Based on the foregoing, the Department believes that it is unnecessary and inappropriate to require state agency concurrence with the Forest Service's finding of good cause that an exigency exists for the issuance of an interim directive.

Directives with the legal effect of a regulation

One comment was received on application of final 36 CFR Part 216 to Forest Service regulations. This commenter was concerned that directives that require public notice and opportunity to comment under final 36 CFR Part 216 will be confused with regulations that have the force of law.

Forest Service regulations that formulate standards, criteria, and guidelines applicable to Forest Service programs require public notice and opportunity to comment per section 14(a) of the FRRRPA. Forest Service regulations have the force of law. In contrast, Forest Service directives contain internal guidance for agency officers and employees, and as such generally do not have the force of law. Procedures for public notice and comment on Forest Service regulations, including in those limited circumstances Forest Service directives that have the legal effect of a regulation, will be addressed in directives in FSH 1109.12. These directives will be published for public comment to the extent they formulate standards, criteria, and guidelines applicable to Forest Service programs, consistent with final 36 CFR Part 216.

