

112TH CONGRESS
1ST SESSION

H. R. 2209

To replace the current Forest Service administrative appeals process with a pre-decisional administrative review process modeled after the successful approach used in the Healthy Forests Restoration Act of 2003, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 2011

Mr. BENISHEK introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To replace the current Forest Service administrative appeals process with a pre-decisional administrative review process modeled after the successful approach used in the Healthy Forests Restoration Act of 2003, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. PRE-DECISIONAL ADMINISTRATIVE REVIEW**
2 **PROCESS FOR FOREST SERVICE ACTIONS IM-**
3 **PLEMENTING LAND AND RESOURCE MAN-**
4 **AGEMENT PLANS.**

5 (a) REPLACEMENT OF CURRENT ADMINISTRATIVE
6 APPEALS PROCESS.—Section 322 of Public Law 102-381
7 (16 U.S.C. 1612 note) is amended by striking subsections
8 (c), (d), and (e) and inserting the following new sub-
9 sections:

10 “(c) PRE-DECISIONAL ADMINISTRATIVE REVIEW
11 PROCESS FOR CERTAIN FOREST SERVICE ACTIONS.—

12 “(1) ESTABLISHMENT AS SOLE MEANS FOR AD-
13 MINISTRATIVE REVIEW.—The Secretary shall estab-
14 lish by regulation a pre-decisional administrative re-
15 view process that will serve as the sole means by
16 which a person can seek administrative review re-
17 garding proposed actions referred to in subsection
18 (a).

19 “(2) REVIEW PERIOD.—The pre-decisional ad-
20 ministrative review process for a proposed action re-
21 ferred to in subsection (a) shall occur during the pe-
22 riod—

23 “(A) beginning after the completion of the
24 environmental assessment or environmental im-
25 pact statement prepared for the action; and

1 “(B) ending not later than the date of the
2 issuance of the final decision approving the ac-
3 tion.

4 “(3) ELIGIBILITY.—To be eligible to participate
5 in the pre-decisional administrative review process
6 for a proposed action referred to in subsection (a),
7 a person shall submit to the Secretary, during
8 scoping or the public comment period for the draft
9 environmental analysis for the action, specific writ-
10 ten comments that relate to the proposed action.

11 “(4) NOTICE OF PROPOSED DECISION.—Fol-
12 lowing the conclusion of the pre-decisional adminis-
13 trative review process for a proposed action referred
14 to in subsection (a), the Secretary shall provide no-
15 tice of, and distribute, the proposed decision along
16 with the final environmental assessment or environ-
17 mental impact statement.

18 “(d) EMERGENCY SITUATIONS.—

19 “(1) EXEMPTION FROM PRE-DECISIONAL AD-
20 MINISTRATIVE REVIEW PROCESS.—Subject to para-
21 graphs (2) and (3), if the Chief of the Forest Serv-
22 ice determines that an emergency situation exists for
23 which immediate implementation of a proposed ac-
24 tion referred to in subsection (a) is necessary, the
25 proposed action shall not be subject the pre-

1 decisional administrative review process in sub-
2 section (c).

3 “(2) NOTICE; POST-DECISIONAL OBJECTION
4 PROCESS.—In the case of an action exempted under
5 paragraph (1), the Forest Service shall—

6 “(A) provide notice of the final decision for
7 the proposed action; and

8 “(B) provide for an expedited post-
9 decisional review process.

10 “(3) IMPLEMENTATION.—The Forest Service
11 may implement an action exempted under paragraph
12 (1) immediately after notice is provided under para-
13 graph (2)(A) and continue such implementation dur-
14 ing the post-decisional administrative review process.

15 “(e) EFFORTS TO EXPEDITE JUDICIAL REVIEW.—
16 Subsections (b) and (c)(3) of section 106 of the Healthy
17 Forests Restoration Act of 2003 (16 U.S.C. 6516) shall
18 apply with respect to—

19 “(1) the judicial review of an action challenging
20 an action referred to in subsection (a); and

21 “(2) any request for an injunction regarding
22 such an action.

23 “(f) RELATIONSHIP TO OTHER AUTHORITIES.—This
24 section does not apply to—

1 “(1) an authorized hazardous fuel reduction
2 project under title I of the Healthy Forests Restora-
3 tion Act of 2003 (16 U.S.C. 6501 et seq.), which
4 has its own special administrative review process
5 under section 105 of such Act (16 U.S.C. 6515);
6 and

7 “(2) a proposed action referred to in subsection
8 (a) for which a categorically exclusion is provided.

9 “(g) SHORT TITLE.—This section may be cited as the
10 ‘Forest Service Administrative Review Act’.”.

11 (b) TECHNICAL CORRECTIONS.—Section 322 of Pub-
12 lic Law 102–381 (16 U.S.C. 1612 note) is further amend-
13 ed—

14 (1) in subsection (a), by striking “(16 U.S.C.
15 1601 et seq.)” and inserting “(16 U.S.C. 1600 et
16 seq.)”; and

17 (2) in subsection (b)—

18 (A) by striking “Secretary” both places it
19 appears and inserting “Forest Service”; and

20 (B) by striking the comma at the end of
21 paragraph (1)(A).

22 (c) EFFECTIVE DATE AND INTERIM PROCESS.—

23 (1) EFFECTIVE DATE.—Subject to paragraph
24 (3), the pre-decisional administrative review process
25 required by subsection (c) of section 322 of Public

1 Law 102–381 (16 U.S.C. 1612 note), as added by
2 subsection (a), shall take effect upon the issuance of
3 final regulations by the Secretary of Agriculture es-
4 tablishing the process.

5 (2) INTERIM PROCESS.—Pending issuance of
6 the final regulations, the Secretary shall apply—

7 (A) the regulations in part 215, title 36,
8 Code of Federal Regulations that implement
9 the notice and comment provisions in sub-
10 sections (a) and (b) of section 322 of Public
11 Law 102–381; and

12 (B) the regulations in part 218, title 36,
13 Code of Federal Regulations, to provide the
14 pre-decisional administrative review process
15 under subsection (c) of section 322 of Public
16 Law 102–381, except that subsection (c)(5) of
17 such section shall apply to require notice and
18 distribution of proposed decisions.

19 (3) TRANSITION.—Upon issuance of the final
20 regulations, the Secretary shall no longer apply the
21 regulations in part 215, title 36, Code of Federal
22 Regulations, that implement subsections (c), (d),
23 and (e) of section 322 of Public Law 102–381, as
24 in effect on the day before the date of enactment of
25 this Act, except with respect to a decision which

1 was, or could have been, appealed under such part
2 on the day before the date of the issuance of the
3 final regulations.

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