

List of Subjects in 36 CFR Part 215

Administrative practice and procedure, National forests.

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

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

Sec.

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

§215.1 Purpose and scope.

(a) *Purpose.* The rules of this part have two purposes. First, this part establishes a process by which the public receives notice and is provided an opportunity to comment on proposed actions for projects and activities implementing a land and resource management plan prior to a decision by the Responsible Official. Second, this part establishes an appeal process and identifies the decisions that may be appealed, who may

appeal those decisions, the responsibilities of the participants in an appeal, and the procedures that apply for the prompt disposition of the appeal.

(b) *Scope*. The notice of proposed actions and opportunity to comment provides an opportunity for the public to provide meaningful input prior to the decision on projects and activities implementing land and resource management plans. The rules of this part complement, but do not replace, numerous other opportunities to participate in and influence the agency's project and activity planning, such as those provided by the National Environmental Policy Act of 1969 (NEPA) implementing regulations and procedures at 40 CFR parts 1500-1508, the National Forest Management Act (NFMA) implementing regulations at part 219, and the pertinent requirements at part 216 regarding notice and comment for certain Forest Service Manual (FSM) directives. The appeal process is available to those who submit substantive comments during the comment period. Appeal disposition constitutes the final administrative determination of the United States Department of Agriculture. Throughout this part, references to decisions which affect an authorized use or occupancy of National Forest System lands and meet all other applicable requirements of this part, are subject to appeal by the holders of such authorizations under either this part or part 251, subpart C, but not under both parts. In addition, certain other parties meeting requirements of §251.86 may also be eligible to appeal projects under either this part or part 251, subpart C, but not under both parts.

§215.2 Definitions.

Address - An individual's or organization's current physical mailing address. An e-mail address is insufficient for identification.

Appeal - The written document filed with an Appeal Deciding Officer by someone seeking review of a decision.

Appeal Deciding Officer - The Secretary of Agriculture (USDA) or the USDA or Forest Service designee having the delegated authority and responsibility to render a decision on an appeal filed under this part. The Appeal Deciding Officer is the next higher-level supervisor of the Responsible Official.

Appeal disposition - Either a written appeal decision or written notification in cases where the original decision is the final agency action and no appeal decision is issued.

Appeal period - The 45-calendar-day period following publication of the legal notice in the newspaper of record of a decision during which an appeal may be filed with the Appeal Deciding Officer.

Appeal record - The information upon which review of an appeal is conducted, consisting of the transmittal letter, the appeal, decision documentation, the legal notice of decision, the Responsible Official's documentation of the informal disposition meeting, and the Appeal Reviewing Officer's recommendation.

Appeal Reviewing Officer - A Forest Service line officer or USDA official who reviews an appeal and makes a written recommendation to the Appeal Deciding Officer on disposition of the appeal.

Appellant - An individual or organization filing an appeal who submitted substantive oral or written comments during the comment period on a specific project or activity.

Categorically excluded (CE) - Proposed actions, which do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental impact statement (EIS) nor an environmental assessment (EA) is required (40 CFR 1508.4; FSH 1909.15, Chapter 30).

Comment period - The 30-calendar-day period following publication of the legal notice in the newspaper of record of a proposed action, during which the public has the opportunity to provide comments to a Responsible Official on a proposed action subject to this part, except for projects requiring an EIS which follow CEQ procedures for notice and comment (40 CFR parts 1503 and 1506.10; FSH 1909.15, Chapter 20). The time period is computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, comments shall be accepted until the end of the next Federal working day.

Decision documentation - The Decision Notice (DN) or Record of Decision (ROD) and all relevant environmental and other analysis documentation and records, including all comment letters received, on which the Responsible Official bases a decision under appeal.

Decision Notice (DN) - A concise written record of a Responsible Official's decision based on an environmental assessment and a Finding of No Significant Impact (FONSI) (40 CFR 1508.13; FSH 1909.15, Chapter 40).

Emergency situation - A situation on National Forest System (NFS) lands for which immediate implementation of all or part of a decision is necessary for relief from hazards threatening human health and safety or natural resources on those NFS or adjacent lands; or that would result in substantial loss of economic value to the Federal Government if implementation of the decision were delayed.

Environmental Assessment (EA) - A concise public document that provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement (EIS) or a finding of no significant impact, aids an agency's compliance with the National Environmental Policy Act (NEPA) when no EIS is necessary, and facilitates preparation of a statement when one is necessary (40 CFR 1508.9; FSH 1909.15, Chapter 40).

Environmental Impact Statement (EIS) - A detailed written statement as required by section 102(2)(C) of the National Environmental Policy Act of 1969 (40 CFR 1508.11; FSH 1909.15, Chapter 20).

Finding of No Significant Impact (FONSI) - A document prepared by a Federal agency presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement, therefore, will not be prepared. It includes the environmental assessment or a summary of it and shall note any other environmental documents related to it (40 CFR 1508.13; FSH 1909.15, Chapter 40).

Forest Service line officer - A Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions subject to this part.

Lead appellant - For appeals submitted with multiple names, or having multiple organizations listed, the appellant identified to represent all other appellants for the purposes of communication, written or otherwise, regarding the appeal. The use of the generic term "appellant" applies to lead appellant also.

Name - The first and last name of an individual or the name of an organization. An electronic username is insufficient for identification of an individual or organization.

National Forest System land - All lands, waters or interests therein administered by the Forest Service (§251.51).

Newspaper(s) of record - Those principal newspapers of general circulation annually identified in a list and published in the **Federal Register** by each Regional Forester to be used for publishing notices of projects and activities implementing land and resource management plans.

Projects and activities implementing a land and resource management plan - Site-specific projects and activities, including those for research, on National Forest System lands that are approved in a Decision Notice (DN) or Record of Decision (ROD) by a Forest Service official.

Proposed action - A proposal made by the Forest Service that is a project or activity implementing a land and resource management plan on National Forest System lands and is subject to the notice and comment provisions of this part.

Record of Decision (ROD) - A document signed by a Responsible Official recording a decision that was preceded by preparation of an environmental impact statement (40 CFR 1505.2; FSH 1909.15, Chapter 20).

Responsible Official - The Forest Service employee who has the delegated authority to make and implement a decision subject to this part.

Substantive comments - Comments that are within the scope of the proposed action, are specific to the proposed action, have a direct relationship to the proposed action and include supporting reasons for the Responsible Official to consider.

Transmittal letter - The Responsible Official's letter transmitting the decision documentation. The letter shall include only an index of the transmitted documents and identification of those portions of the record that relate to the issues raised.

§215.3 Proposed actions subject to legal notice and opportunity to comment.

The legal notice (§215.5) and opportunity to comment procedures (§215.6) apply only to:

- (a) Proposed projects and activities implementing land and resource management plans (§215.2) for which an environmental assessment (EA) is prepared;
- (b) Proposed projects and activities described in a draft environmental impact statement (EIS), for which notice and comment procedures are governed by 40 CFR parts 1500-1508 also;
- (c) Proposed non-significant amendments to a land and resource management plan (pursuant to the 1982 planning regulations) that are included as part of a decision on a proposed action for which an EA is prepared;
- (d) A proposed action resulting in a revision of an EA based on consideration of new information or changed circumstances (FSH 1909.15, Chapter 10, section 18) as provided for in §215.18(b)(1); and
- (e) Proposed research activities to be conducted on National Forest System lands.

§215.4 Actions not subject to legal notice and opportunity to comment.

The procedures for legal notice (§215.5) and opportunity to comment (§215.6) do not apply to:

(a) Projects and activities which are categorically excluded from documentation in an environmental impact statement (EIS) or environmental assessment (EA) pursuant to FSH 1909.15, Chapter 30, section 31;

(b) Proposed amendments to, revision of, or adoption of land and resource management plans that are made separately from any proposed actions, and which are therefore subject to either the objection process of §219.32 or the administrative appeal and review procedures of part 217 in effect prior to November 9, 2000 (see 36 CFR parts 200 to 299, Revised as of July 1, 2000);

(c) Projects and activities not subject to the provisions of the National Environmental Policy Act and the implementing regulations at 40 CFR parts 1500-1508 and the National Forest Management Act and the implementing regulations at 36 CFR part 219;

(d) Determinations by the Responsible Official, after consideration of new information or changed circumstances, that a revision of the EA is not required (1909.15, Chapter 10, section 18); and

(e) Rules promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or policies and procedures issued in the Forest Service Manual and Handbooks (part 216).

§215.5 Legal notice of proposed actions.

(a) *Responsible Official.* The Responsible Official shall:

(1) Provide notice of the opportunity to comment on a proposed action implementing the land and resource management plan.

(2) Determine the most effective timing for publishing the legal notice of the proposed action and opportunity to comment.

(3) Promptly mail notice about the proposed action to any individual or organization who has requested it and to those who have participated in project planning.

(4) Publish a legal notice of the opportunity to comment on a proposed action as provided for in paragraph (b)(2).

(5) Accept all written and oral comments on the proposed action as provided for in §215.6(a)(4).

(6) Identify all substantive comments.

(b) *Legal notice of proposed action.*

(1) *Content of legal notice.* All legal notices shall include the following:

(i) The title and brief description of the proposed action.

(ii) A general description of the proposed action's location with sufficient information to allow the interested public to identify the location.

(iii) A statement that the Responsible Official is requesting an emergency situation determination or it has been determined that an emergency situation exists for the project or activity as provided for in §215.10, when applicable.

(iv) For a proposed action to be analyzed and documented in an environmental assessment (EA), a statement that the opportunity to comment ends 30 days following the date of publication of the legal notice in the newspaper of record (§215.6(a)(2)); legal notices shall not contain the specific date since newspaper publication dates may vary.

(v) For a proposed action that is analyzed and documented in a draft environmental impact statement (EIS), a statement that the opportunity to comment ends

45 days following the date of publication of the notice of availability (NOA) in the **Federal Register** (§215.6(a)(2)). The legal notice must be published after the NOA and contain the NOA publication date.

(vi) A statement that only those who submit timely and substantive comments will be accepted as appellants.

(vii) The Responsible Official's name, title, telephone number, and addresses (street, postal, facsimile, and e-mail) to whom comments are to be submitted and the Responsible Official's office business hours for those submitting hand-delivered comments (§215.6(a)(4)(ii)).

(viii) A statement indicating that for appeal eligibility each individual or representative from each organization submitting substantive comments must either sign the comments or verify identity upon request.

(ix) The acceptable format(s) for electronic comments.

(x) Instructions on how to obtain additional information on the proposed action.

(2) *Publication.*

(i) Through notice published annually in the **Federal Register**, each Regional Forester shall advise the public of the newspaper(s) of record utilized for publishing legal notices required by this part.

(ii) Legal notice of the opportunity to comment on a proposed action shall be published in the applicable newspaper of record identified in paragraph (b)(2)(i) for each National Forest System unit. When the Chief is the Responsible Official, notice shall also be published in the **Federal Register**. The publication date of the legal notice in the newspaper of record is the exclusive means for calculating the time to submit comments on a proposed action to be analyzed and documented in an EA. The publication date of the NOA in the **Federal Register** is the exclusive means for calculating the time to submit comments on a proposed action that is analyzed and documented in a draft EIS.

§215.6 Comments on proposed actions.

(a) *Opportunity to comment.*

(1) *Time period for submission of comments.*

(i) *Environmental Assessment.* Comments on the proposed action shall be accepted for 30 days following the date of publication of the legal notice.

(ii) *Draft Environmental Impact Statement.* Comments on the proposed action shall be accepted for 45 days following the date of publication in the **Federal Register** pursuant to 40 CFR parts 1500-1508.

(iii) It is the responsibility of all individuals and organizations to ensure that their comments are received in a timely manner as provided for in paragraph (a)(4).

(iv) The time period for the opportunity to comment on environmental assessments shall not be extended.

(2) *Computation of the comment period.* The time period is computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, comments shall be accepted until the end of the next Federal working day (11:59 p.m.).

(i) *Environmental Assessment (EA).* The 30-day comment period for proposed actions to be analyzed and documented in an EA begins on the first day after publication of the legal notice.

(ii) *Draft Environmental Impact Statement (EIS)*. The 45-day comment period for proposed actions that are analyzed and documented in a draft EIS begins on the first day after publication of the NOA in the **Federal Register**.

(3) *Requirements*. Individuals and organizations wishing to be eligible to appeal must provide the following:

(i) Name and address.

(ii) Title of the proposed action.

(iii) Specific substantive comments (§215.2) on the proposed action, along with supporting reasons that the Responsible Official should consider in reaching a decision.

(iv) Signature or other verification of identity upon request; identification of the individual or organization who authored the comment(s) is necessary for appeal eligibility.

(A) For appeals listing multiple organizations or multiple individuals, a signature or other means of verification must be provided for the individual authorized to represent each organization and for each individual in the case of multiple names, to meet appeal eligibility requirements.

(B) Those using electronic means may submit a scanned signature. Otherwise another means of verifying the identity of the individual or organizational representative may be necessary for electronically submitted comments or comments received by telephone.

(v) Individual members of an organization must submit their own substantive comments to meet the requirements of appeal eligibility; comments received on behalf of an organization are considered as those of the organization only.

(vi) Oral comments must be provided at the Responsible Official's office during normal business hours via telephone or in person, or if during non-business hours, must be at an official agency function (such as a public meeting) which is designed to elicit public comment.

(4) *Evidence of timely submission*. When there is a question about timely submission of comments, timeliness shall be determined as follows:

(i) Written comments must be postmarked by the Postal Service, e-mailed, faxed, or otherwise submitted (for example, express delivery service) by 11:59 p.m. on the 30th calendar day following publication of the legal notice for proposed actions to be analyzed and documented in an EA or the 45th calendar day following publication of the NOA in the **Federal Register** for a draft EIS.

(ii) Hand-delivered comments must be time and date imprinted at the correct Responsible Official's office by the close of business on the 30th calendar day following publication of the legal notice for proposed actions to be analyzed and documented in an EA or the 45th calendar day following publication of the NOA in the **Federal Register** for a draft EIS.

(iii) For electronically mailed comments, the sender should normally receive an automated electronic acknowledgment from the agency as confirmation of receipt. If the sender does not receive an automated acknowledgment of the receipt of the comments, it is the sender's responsibility to ensure timely receipt by other means.

(b) *Consideration of comments*.

(1) The Responsible Official shall consider all substantive written and oral comments submitted in compliance with paragraph (a).

(2) All written comments received by the Responsible Official shall be placed in the project file and shall become a matter of public record.

(3) The Responsible Official shall document and date all oral comments received in response to the legal notice (§215.5) and place them in the project file.

§215.7 Legal notice of decision.

(a) The Responsible Official shall promptly mail the Record of Decision (ROD) or the Decision Notice (DN) and Finding of No Significant Impact (FONSI) to those who requested the decision document and those who submitted substantive comments during the comment period (§215.6).

(b) The Responsible Official shall publish a legal notice of any decision documented in a ROD or DN in the applicable newspaper of record (§215.5(b)(2)). The legal notice shall:

(1) Include the title of the project or activity and a concise description of the action(s) to be taken, the name and title of the Responsible Official, and instructions for obtaining a copy of the DN and FONSI or ROD.

(2) State that the decision is subject to appeal pursuant to 36 CFR part 215 and include the following:

(i) Name and address of the Appeal Deciding Officer with whom an appeal is to be filed. The notice shall specify a street, postal, fax, and e-mail address, the acceptable format(s) for appeals electronically filed, and the Appeal Deciding Official's office business hours for those filing hand-delivered appeals.

(ii) A statement that the publication date of the legal notice in the newspaper of record is the exclusive means for calculating the time to file an appeal (§215.15 (a)) and that those wishing to appeal should not rely upon dates or timeframe information provided by any other source. An actual date shall not be included in the legal notice.

(iii) A statement that an appeal, including attachments, must be filed (regular mail, fax, e-mail, hand-delivery, express delivery, or messenger service) with the appropriate Appeal Deciding Officer (§215.8) within 45 days following the date of publication of the legal notice.

(iv) A statement indicating that individuals or organizations who submitted substantive comments during the comment period (§215.6) may appeal.

(v) A statement specifying, when applicable, that the Chief of the Forest Service, or a designee, has determined that an emergency situation exists (§215.10), and which portion of the project is covered by that determination as provided for in §215.10.

(vi) A statement indicating how many days following publication of the decision that implementation may begin (§215.9), including those portions covered by an emergency situation determination, if applicable (§215.10).

(3) When no substantive comments expressing concerns or only supportive comments are received, include a statement indicating that the decision is not subject to appeal pursuant to §215.12.

§215.8 Appeal Deciding Officer.

(a) *Appropriate Appeal Deciding Officer.* Appeals must be filed with the Appeal Deciding Officer as follows:

If the Responsible Official who made the decision is: Then the Appeal Deciding Officer is:

Chief	Secretary of Agriculture
Regional Forester or Station Director.....	Chief of the Forest Service
Forest Supervisor	Regional Forester
District Ranger	Forest Supervisor

(b) *Authority.* The Appeal Deciding Officer makes all procedural determinations. Such determinations are not subject to further administrative review.

(1) *Consolidation of appeal decisions.* In cases involving more than one appeal of a decision, the Appeal Deciding Officer may consolidate appeals and may issue one or more appeal decisions.

(2) *Appeals with multiple names (organization(s) or individuals).*

(i) When an appeal lists multiple names, the Appeal Deciding Officer shall identify all qualified appellants (§215.13).

(ii) The Appeal Deciding Officer may appoint the first name listed as the lead appellant (§215.2) to act on behalf of all parties to that appeal when the appeal does not specify a lead appellant (§215.14(b)(3)).

(3) *Appeal disposition.*

(i) The Appeal Deciding Officer shall render the final disposition on an appeal and notify the appellant(s) in writing concerning the disposition of the appeal (§215.15(e)(2)).

(ii) The Appeal Deciding Officer may issue an appeal decision different from the Appeal Reviewing Officer's recommendation.

§215.9 Decision implementation.

(a) When no appeal is filed within the 45-day time period, implementation of the decision may begin on, but not before, the 5th business day following the close of the appeal-filing period (§215.15).

(b) Except for emergency situations (§215.10(c)), when an appeal is filed, implementation may occur on, but not before, the 15th business day following the date of appeal disposition (§215.2). In the event of multiple appeals of the same decision, the implementation date is controlled by the date of the last appeal disposition.

(c) When a project or activity decision is not subject to appeal (§215.12), implementation may occur as follows:

(1) Immediately after publication (§215.7(b)) of a decision documented in a Decision Notice; or

(2) Immediately when documented in a Record of Decision after complying with the timeframes and publication requirements described in 40 CFR 1506.10(b)(2).

§215.10 Emergency situations.

(a) *Authority.* The Chief and the Associate Chief of the Forest Service are authorized to make the determination that an emergency situation (§215.2) exists, and they may delegate this authority only to the Deputy Chief for National Forest System and to the Regional Foresters. Persons acting in these positions may exercise this authority

only when they are filling vacant positions and they have been formally delegated full acting authority for the positions. Persons acting in positions during temporary absences of the incumbents shall not be delegated this authority to make emergency situation determinations.

(b) *Determination.* The determination that an emergency situation exists shall be based on an examination of the relevant information. During the review, additional information may be requested.

(c) *Implementation.* When it is determined that an emergency situation exists with respect to all or part of the decision, implementation may proceed as follows:

(1) Immediately after publication (§215.7(b)) of a decision documented in a Decision Notice, for that portion of the decision determined to be an emergency.

(2) Immediately when documented in a Record of Decision, after complying with the timeframes and publication requirements described in 40 CFR 1506.10(b)(2), for that portion of the decision determined to be an emergency.

(d) *Notification.* The Responsible Official shall notify the public in the legal notice of the decision (§215.7) that the Forest Service made a determination that all or part of a project decision is an emergency situation.

§215.11 Decisions subject to appeal.

The following decisions are subject to appeal under this part:

(a) Decisions for projects and activities implementing land and resource management plans (§215.2) documented in a Record of Decision (ROD) or Decision Notice (DN), including those which contain a non-significant amendment to a land and resource management plan as a part of the decision;

(b) A new DN after revision of an environmental assessment (EA), or a new ROD after supplementation or revision of an environmental impact statement (EIS), pursuant to FSH 1909.15, Chapter 10, section 18. However, only that portion of the decision that is changed is subject to appeal.

(c) Decisions made in conjunction with other Federal agencies and meeting the requirements of preceding paragraph (a). However, only that portion of the decision made by the Forest Service affecting National Forest System lands (§215.2) is subject to appeal under this part.

(d) Decisions which affect the holders of a special use authorization or certain applicants for special use authorizations for use or occupancy of National Forest System lands (§251.86) and meeting the requirements of preceding paragraph (a), are subject to appeal by those same parties under either this part or part 251, subpart C, but not under both parts.

§215.12 Decisions and actions not subject to appeal.

The following decisions and actions are not subject to appeal under this part, except as noted:

(a) The amendment, revision, or adoption of a land and resource management plan that includes a project decision, except that the project portion of the decision is subject to this part. The amendment, revision, or adoption portion of a decision is subject to either the objection process of §219.32 or the administrative appeal and review

procedures of part 217 in effect prior to November 9, 2000 (see 36 CFR parts 200 to 299, Revised as of July 1, 2000);

(b) Determination, with documentation, that a new decision is not needed following supplementation of an environmental impact statement (EIS) or revision of an environmental assessment (EA) pursuant to FSH 1909.15, Chapter 10, section 18.

(c) Preliminary findings made during planning and/or analysis processes on a project or activity. Such findings are appealable only upon issuance of a decision document.

(d) Subsequent implementing actions that result from the initial project decision that was subject to appeal.

(e) Projects or activities for which notice of the proposed action and opportunity to comment is published (§215.5) and

(1) No substantive comments expressing concerns or only supportive comments are received during the comment period for a proposed action analyzed and documented in an EA (§215.6); or

(2) No substantive comments expressing concerns or only supportive comments are received during the comment period for a draft EIS (40 CFR 1502.19), and the Responsible Official's decision does not modify the preferred alternative identified in the draft EIS.

(f) Decisions for actions that have been categorically excluded from documentation in an EA or EIS pursuant to FSH 1909.15, Chapter 30, section 31.

(g) An amendment, revision, or adoption of a land and resource management plan that is made independent of a project or activity (subject to either the objection process of §219.32 or the administrative appeal and review procedures of part 217 in effect prior to November 9, 2000 (see 36 CFR parts 200 to 299, Revised as of July 1, 2000)).

(h) Concurrences and recommendations to other Federal agencies.

§215.13 Who may appeal.

(a) Individuals and organizations who submit substantive written or oral comments during the 30-day comment period for an environmental assessment, or 45-day comment period for a draft environmental impact statement (§215.6, 40 CFR 1506.10; FSH 1909.15, Chapter 20), except as provided for in paragraph (c) of this section, may file an appeal. Comments received from an authorized representative(s) of an organization are considered those of the organization only; individual members of that organization do not meet appeal eligibility solely on the basis of membership in an organization; the member(s) must submit substantive comments as an individual in order to meet appeal eligibility.

(b) When an appeal lists multiple individuals or organizations, each shall meet the requirements of paragraph (a) of this section. Individuals or organizations that do not meet the requirements of paragraph (a) shall not be accepted as appellants.

(c) Federal agencies may not appeal.

(d) Federal employees, who otherwise meet the requirements of this part for filing appeals in a non-official capacity, 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 nor use government property or equipment in the preparation or filing of an appeal. Further, employees shall not

incorporate information unavailable to the public, i.e. Federal agency documents that are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552 (b)).

§215.14 Appeal content.

(a) It is the appellant's responsibility to provide sufficient project- or activity-specific evidence and rationale, focusing on the decision, to show why the Responsible Official's decision should be reversed (paragraph (b)(6-9)).

(b) The appeal must be filed with the Appeal Deciding Officer §215.8 in writing. At a minimum, an appeal must include the following:

- (1) Appellant's name and address (§215.2), with a telephone number, if available;
- (2) Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the appeal);
- (3) When multiple names are listed on an appeal, identification of the lead appellant (§215.2) and verification of the identity of the lead appellant upon request;
- (4) The name of the project or activity for which the decision was made, the name and title of the Responsible Official, and the date of the decision;
- (5) The regulation under which the appeal is being filed, when there is an option to appeal under either this part or part 251, subpart C (§215.11(d));
- (6) Any specific change(s) in the decision that the appellant seeks and rationale for those changes;
- (7) Any portion(s) of the decision with which the appellant disagrees, and explanation for the disagreement;
- (8) Why the appellant believes the Responsible Official's decision failed to consider the substantive comments; and
- (9) How the appellant believes the decision specifically violates law, regulation, or policy.

(c) The Appeal Deciding Officer shall not process an appeal when one or more of the following applies:

- (1) An appellant's identity is not provided or cannot be determined from the signature (written or electronically scanned) and a reasonable means of contact is not provided.
- (2) The appellant has not provided a reasonable means of contact.
- (3) The decision cannot be identified.
- (4) The appeal is illegible for any reason, including those submitted electronically in a format different from that specified in the legal notice.

§215.15 Appeal time periods and process.

(a) *Time to file an appeal.* Written appeals, including any attachments, must be filed with the Appeal Deciding Officer within 45 days following the publication date of the legal notice of the decision in the newspaper of record (§215.7). It is the responsibility of appellants to ensure that their appeal is received in a timely manner.

(b) *Computation of time periods.* (1) All time periods are computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, the time is extended to the end of the next Federal working day (11:59 p.m.).

(2) The day after the publication of the legal notice of the decision in the newspaper of record (§215.7) is the first day of the appeal-filing period.

(3) The publication date of the legal notice of the decision in the newspaper of record is the exclusive means for calculating the time to file an appeal. Appellants should not rely on dates or timeframe information provided by any other source.

(c) *Evidence of timely filing.* When there is a question about timely filing of an appeal, timeliness shall be determined by:

(1) The date of the postmark, e-mail, fax, or other means of filing (for example, express delivery service) an appeal and any attachment;

(2) The time and date imprint at the correct Appeal Deciding Officer's office on a hand-delivered appeal and any attachments; or

(3) When an appeal is electronically mailed, the appellant should normally receive an automated electronic acknowledgment from the agency as confirmation of receipt. If the appellant does not receive an automated acknowledgment of the receipt of the appeal, it is the appellant's responsibility to ensure timely receipt by other means.

(d) *Extensions.* Time extensions, except as noted in paragraph (b) of this section, are not permitted.

(e) *Other timeframes.* Unless an appeal is resolved through the informal disposition process (§215.17), the following timeframes and processes shall apply:

(1) *Transmittal of decision documentation.* Within 15 days of the close of the appeal-filing period, the Responsible Official shall transmit the decision documentation to the Appeal Reviewing Officer including a list of those individuals or organizations who submitted substantive comments.

(2) *Appeal disposition.* Within 45 days following the end of the appeal-filing period, the Appeal Deciding Officer should render a written decision to the appellant(s) concerning their appeal. When an appeal decision is not rendered by day 45, the Appeal Deciding Officer shall notify the appellant(s) in writing that an appeal decision will not be issued (§215.18(b)).

(3) When an appeal decision is not issued within 45 days, the Responsible Official's decision is deemed the final agency action.

§215.16 Dismissal of appeal without review.

(a) The Appeal Deciding Officer shall dismiss an appeal without review when one or more of the following applies:

(1) The postmark on an appeal mailed or otherwise filed (for example, express mail service) or the evidence of the date sent on an e-mailed or faxed appeal is not within the 45-day appeal-filing period (§215.15).

(2) The time and date imprint at the correct Appeal Deciding Officer's office on a hand-delivered appeal is not within the 45-day appeal-filing period (§215.15).

(3) The requested relief or change cannot be granted under law or regulation.

(4) The appellant has appealed the same decision under part 251 (§215.11(d)).

(5) The decision is not subject to appeal (§215.12).

(6) The individual or organization did not submit substantive comments during the comment period (§215.6).

(7) The Responsible Official withdraws the decision.

(8) The appeal does not provide sufficient information in response to §215.14(b)(6) through (9) for the Appeal Deciding Officer to render a decision.

(9) The appellant withdraws the appeal.

(b) Any additional information or attachment to an appeal that is not filed within the 45-day appeal-filing period shall not be considered with the appeal.

(c) The Appeal Deciding Officer shall give written notice to the appellant and the Responsible Official when an appeal is dismissed and shall give the reasons for dismissal.

§215.17 Informal disposition.

(a) *Offer to meet.* When an appeal is received, the Responsible Official, or designee, must contact the appellant and offer to meet and discuss resolution of the issues raised in the appeal. This contact shall be made as soon as practicable after the Appeal Deciding Officer receives the appeal and the Responsible Official is notified. In the case of multiple names or organizations, it is the responsibility of the lead appellant (§215.2) to contact any other persons named in their appeal who may desire to participate in the informal disposition meeting. If the appellant(s) decline to meet, the Responsible Official shall so advise the Appeal Deciding Officer.

(b) *Time and location of meeting.* When an appellant agrees to meet, the initial meeting shall take place within 15 days after the closing date for filing an appeal (§215.15). The location of the meeting shall be in the vicinity of the lands affected by the decision. When the District Ranger is the Responsible Official, meetings will generally be located on or near that Ranger District. When the Forest Supervisor, Regional Forester, or the Chief is the Responsible Official, meetings will generally take place at a location within or near the National Forest.

(c) *Meeting structure.* Generally, the appellant(s) should be physically present at informal disposition meetings. If the appellant cannot attend a meeting in person because of schedule conflicts or travel distances, alternative types of meetings (such as telephone conferences or video conferences) may be arranged. All meetings are open to the public.

(d) *Outcome.* After the informal disposition meeting, the Responsible Official shall notify the Appeal Deciding Officer in writing of the meeting participants and which of the following three outcomes occurred.

(1) An appellant and the Responsible Official reach agreement on disposition of all or a portion of an appeal. The appellant shall withdraw all or the agreed upon portion of the appeal by letter to the Appeal Deciding Officer within 15 days of the agreement. When the appellant does not withdraw the appeal in writing, formal review and disposition of the appeal shall continue.

(2) As a result of the agreement reached at the informal disposition meeting, new information is received or changes to the original decision or environmental analysis are proposed. The Responsible Official must follow the correction, supplementation, or revision of environmental documentation and reconsideration of decisions to take action guidance in FSH 1909.15, Chapter 10, section 18, and §§215.3 and 215.4.

(3) An appeal is not entirely resolved through informal disposition. Formal review and disposition of the unresolved portion of the appeal shall continue (§215.18).

§215.18 Formal review and disposition procedures.

(a) *Scope of review.* The Appeal Deciding Officer shall complete a review based on the appeal record (§215.2) and the Appeal Reviewing Officer's recommendation (§215.19(b)).

(b) *Disposition.* The Appeal Deciding Officer shall either:

(1) Issue a written appeal decision within 45 days following the end of the appeal-filing period, which affirms or reverses the Responsible Official's decision, either in whole or in part, and which may include instructions for further action. When an appeal decision involves instructions concerning new information or changed circumstances, the Responsible Official must follow the correction, supplementation, or revision of environmental documentation and reconsideration of decisions to take action guidance in FSH 1909.15, Chapter 10, section 18 and §§215.3, 215.4, 215.11, and 215.12. The Appeal Deciding Officer shall send a copy of the appeal decision to the appellant(s), the Appeal Reviewing Officer, and the Responsible Official within 5 days; or

(2) Not issue an appeal decision and so notify the appellant(s) in writing that an appeal decision will not be issued and that the Responsible Official's decision constitutes the final agency action of the Department of Agriculture (§215.15(e)(2)). Notification shall be sent no sooner than 46 days nor later than 50 days following the end of the appeal-filing period.

(c) *Final administrative determination.* The Appeal Deciding Officer's appeal disposition constitutes the final administrative determination of the Department of Agriculture.

§215.19 Appeal Reviewing Officer.

(a) *Designation.* The Appeal Reviewing Officer shall be:

(1) Designated by the Chief or designee, and shall be a line officer at least at the level of the agency official who made the initial decision on the project or activity that is under appeal, who has not participated in the initial decision and will not be responsible for implementation of the initial decision after the appeal is decided; or

(2) Designated by the Secretary in the case of Chief's decisions.

(b) *Review and recommendation.* The Appeal Reviewing Officer shall review an appeal and the decision documentation and make a written recommendation to the Appeal Deciding Officer on the disposition of the appeal. That recommendation shall be released only upon issuance of an appeal decision.

(c) *Multiple appeals.* In cases involving more than one appeal of a decision, the Appeal Reviewing Officer may consolidate appeals and issue one or more recommendations.

§215.20 Secretary's authority.

(a) Nothing in this section shall restrict the Secretary of Agriculture from exercising any statutory authority regarding the protection, management, or administration of National Forest System lands.

(b) Decisions of the Secretary of Agriculture or Under Secretary, Natural Resources and Environment are not subject to the notice, comment, and appeal procedures set forth in this part. A decision by the Secretary or Under Secretary constitutes the final administrative determination of the Department of Agriculture.

§215.21 Judicial proceedings.

It is the position of the Department of Agriculture that any filing for Federal judicial review of a decision subject to appeal is premature and inappropriate unless the plaintiff has first sought to invoke and exhaust the appeal procedures in this part (7 U.S.C. 6912 (e)).

§215.22 Applicability and effective date.

(a) The notice, comment, and appeal procedures set out in this part, except as noted in paragraph (b) below, apply to all projects and activities for which legal notice is published pursuant to §215.5 on or after June 4, 2003.

(b) The provisions concerning electronic comments (§§215.5(b)(vi-vii) and 215.6(a)(4)(iii)) and electronic appeals (§§215.7(b)(2)(i) and (iii) and 215.15(c)(1) and (3)) are effective July 7, 2003.

(c) The notice, comment, and appeal procedures of part 215 in effect prior to June 4, 2003 remain in effect for those projects and activities for which legal notice (§§215.5 or 215.7) is published prior to June 4, 2003 (see 36 CFR parts 200 to 299, Revised as of July 1, 2002).

/s/ David P. Tenny
David P. Tenny
Deputy Under Secretary, Natural
Resources and Environment

5/13/03
(Dated)