

Forest Service, USDA

§ 251.82

this subpart to connote the full range of actions and decisions a forest officer takes to issue written instruments, or to manage authorized uses of National Forest System lands, including, but not limited to, enforcement of terms and conditions, and suspension, cancellation, and/or termination of an authorization.

Forest Service line officer. The Chief of the Forest Service or 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 under this subpart. Specifically, for the purposes of this subpart, a Forest Service employee who holds one of the following offices and titles: District Ranger, Forest Supervisor, Deputy Forest Supervisor, Regional Forester, Deputy Regional Forester, Deputy Chief, Associate Deputy Chief, Associate Chief, or the Chief of the Forest Service.

Intervenor. An individual who, or organization that, is an applicant for or holder of the written instrument, or a similar instrument, issued by the Forest Service that is the subject of an appeal, and who has an interest that could be affected by an appeal, and who has made a timely request to intervene in that appeal, and who has been granted intervenor status by the Reviewing Officer (§251.96).

Issuance of a written instrument of authorization. Applies both to decisions to grant and to deny a written instrument or authorization.

Notice of appeal. The document prepared and filed by an appellant to dispute a decision subject to review under this subpart (§251.90).

Oral presentation. An informal meeting (in person or by telephone) at which an appellant, intervenor, and/or Deciding Officer may present information related to an appeal to the Reviewing Officer (§251.97).

Parties to an appeal. The appellant(s), intervenor(s), and the Deciding Officer.

Responsive statement. A written document prepared by a Deciding Officer that responds to the notice of appeal record by an appellant (§251.94).

Reviewing Officer. The officer at the next administrative level above that of the Deciding Officer who conducts appeal proceedings, makes all necessary

rulings regarding conduct of an appeal, and issues the appeal decision.

Written instrument or authorization. Any of those kinds of documents listed in §251.82 of this subpart issued or approved by the Forest Service authorizing an individual, organization or other entity to occupy and use National Forest System lands and resources.

[54 FR 3362, Jan. 23, 1989; 54 FR 13807, Apr. 5, 1989]

§ 251.82 Appealable decisions.

(a) The rules of this subpart govern appeal of written decisions of Forest Service line officers related to issuance, denial, or administration of the following written instruments to occupy and use National Forest System lands, including but not limited to:

(1) Permits for ingress and egress to intermingled and adjacent private lands across National Forest System lands, 36 CFR 212.8 and 212.10.

(2) Permits and occupancy agreements on National Grasslands and other lands administered under the provisions of title III of Bankhead-Jones Farm Tenant Act issued under 36 CFR 213.3.

(3) Grazing and livestock use permits issued under 36 CFR part 222, subpart A.

(4) Mining plans of operation under 36 CFR part 228, subpart A.

(5) Mining operating plans for the Sawtooth National Recreation Area issued under 36 CFR 292.17 and 292.18.

(6) Permits and agreements regarding mineral materials (petrified wood and common varieties of sand, gravel, stone, pumice, pumicite, cinder, clay and other similar materials) under 36 CFR 228, subpart C.

(7) Permits authorizing exercise of mineral rights reserved in conveyance to the United States issued under 36 CFR part 251, subpart A.

(8) Special use authorizations issued under 36 CFR part 251, subpart B, except, as provided in §251.60(g), for suspension or termination of easements issued pursuant to 36 CFR 251.53(e) and (e)(1).

(9) Permits for uses in Wilderness Areas issued under 36 CFR 293.3.

§ 251.83

(10) Permits to excavate and/or remove archaeological resources issued under the Archaeological Resources Protection Act 1979 and 36 CFR part 296.

(11) Approval/non-approval of Surface Use Plans of Operations related to the authorized use and occupancy of a particular site or area.

(12) Decisions related to the standards for the use, subdivision, and development of privately owned property within the boundaries of the Sawtooth National Recreation Area pursuant to 36 CFR part 292, subpart C.

(b) Written decisions on any of the matters of the type listed in paragraph (a) of this section issued by a Forest Service staff officer with delegated authority to act for a Forest Service line officer are considered to be decisions of the line officer.

[54 FR 3362, Jan. 23, 1989, as amended at 54 FR 34510, Aug. 21, 1989]

§ 251.83 Decisions not appealable.

The following decisions are not appealable under this subpart:

(a) Decisions appealable to the Agriculture Board of Contract Appeals, USDA, under 7 CFR part 24.

(b) Decisions involving Freedom of Information Act denials under 7 CFR part 1 or Privacy Act determinations under 7 CFR 1.118.

(c) Decisions for which the jurisdiction of another Government agency, the Comptroller General, or a court to hear and settle disputes supersedes that of the Department of Agriculture.

(d) Recommendations of Forest Service line officers to higher ranking Forest Service line officers or to other entities having final authority to implement the recommendation in question.

(e) Decisions appealable under separate administrative proceedings, including, but not limited to, those under 36 CFR 223.117 (Administration of Cooperative for Federal Sustained Yield Units); 7 CFR 21.104 (Eligibility for Recreation Payment of Amount); and 4 CFR part 21 (Bid Protests).

(f) Decisions pursuant to Office of Management and Budget Circular A-76, Performance of Commercial Activities.

(g) Decisions concerning contracts under the Federal Property and Admin-

36 CFR Ch. II (7-1-02 Edition)

istrative Services Act of 1949, as amended.

(h) Decisions covered by the Contract Disputes Act.

(i) Decisions involving Agency personnel matters.

(j) Decisions where relief sought is reformation of a contract or award of monetary damages.

(k) Decisions made during the preliminary planning process pursuant to 36 CFR part 219 and 40 CFR parts 1500-1508 that precede decisions to implement the proposed action.

(l) Decisions related to National Forest land and resource management plans and projects only reviewable under 36 CFR part 217.

(m) Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena such as wildfires, severe wind, earthquakes, and flooding when the Regional Forester or, in situations of national significance, the Chief of the Forest Service determines and gives notice that good cause exists to exempt such decisions from appeal under this subpart.

(n) Decisions imposing penalties for archaeological violations under 36 CFR 296.15 or for violations of prohibitions and orders under 36 CFR part 261.

(o) Reaffirmation of prior decisions.

[54 FR 3362, Jan. 23, 1989, as amended at 54 FR 34510, Aug. 21, 1989]

§ 251.84 Obtaining notice.

(a) A Deciding Officer shall promptly give written notice of decisions subject to appeal under this subpart to applicants and holders defined in § 251.86 of this subpart and to any holder of like instruments who has made a written request to be notified of a specific decision. The notice shall include a statement of the Deciding Officer's willingness to meet with applicants or holders to hear and discuss any concerns or issues related to the decision (§ 251.93). The notice shall also specify the name of the officer to whom an appeal of the decision may be filed, the address, and the deadline for filing an appeal.

(b) In States with Department of Agriculture certified mediation programs, a Deciding Officer shall also give written notice of the opportunity for the