

Forest Service, USDA

§ 251.88

Secretary's office that the Chief's decision is the final administrative decision of the Department of Agriculture. When the Secretary elects to review an initial decision made by the Chief, the Secretary shall conduct the review in accordance with the first level appeal procedures outlined in this rule.

(b) *Decisions made By Forest Supervisors and Regional Foresters.* Only one level of appeal is available on written decisions by Forest Service line officers below the level of the Chief and above the level of the District Ranger. The levels of available appeal are as follows:

(1) If the decision is made by a Forest Supervisor, the appeal is filed with the Regional Forester;

(2) If the decision is made by a Regional Forester, the appeal is filed with the Chief of the Forest Service.

(c) *Decisions made by the District Ranger.* Two levels of appeal are available for written decisions by District Rangers.

(1) The appeal for initial review is filed with the Forest Supervisor.

(2) The appeal for a second level of review is filed with the Regional Forester within 15 days of the first level appeal decision. Upon receiving such a request, the Regional Forester shall promptly request the first level file from the Forest Supervisor. The review shall be conducted on the existing record and no additional information shall be added to the file.

(d) *Discretionary review of dismissal decisions.* Dismissal decisions rendered by Forest Service line officers pursuant to this part (§251.92) are subject to only one level of discretionary review (§251.100) as follows:

(1) If the Reviewing Officer was the Forest Supervisor, the Regional Forester has discretion to review.

(2) If the Reviewing Officer was the Regional Forester, the Chief has discretion to review.

(3) If the Reviewing Officer was the Chief, the Secretary of Agriculture has discretion to review.

(e) *Discretionary review of appeal decisions.* Appeal decisions rendered by Regional Foresters and the Chief pursuant to this part are subject to only one level of discretionary review as follows:

(1) If the Reviewing Officer is the Regional Forester, the Chief of the Forest Service has discretion to review.

(2) If the Reviewing Officer is Chief, the Secretary of Agriculture has discretion to review.

(3) A Regional Forester's decision on a second-level appeal constitutes the final administrative determination of the Department of Agriculture on the appeal and is not subject to further review by a higher level officer under this subpart.

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

§ 251.88 Filing procedures.

(a) *Filing procedures.* In order to appeal a decision under this subpart, an appellant must:

(1) File a notice of appeal in accordance with §251.90 of this subpart with the next higher line officer as identified in §251.87.

(2) File the notice of appeal within 45 days of the date on the notice of the written decision being appealed (§251.84); and

(3) Simultaneously send a copy of the notice of appeal to the Deciding Officer.

(b) *Evidence of timely filing.* It is the responsibility of those filing an appeal to file the notice of appeal by the end of the filing period. In the event of questions, legible postmarks will be considered evidence of timely filing. Where postmarks are illegible, the Reviewing Officer shall rule on the timeliness of the notice of appeal. Untimely submissions are subject to dismissal as provided for in §251.92(a)(2).

(c) *Computation of time period for filing.* (1) The time period for filing a notice of appeal of a decision under this subpart begins on the first day after the Deciding Officer's written notice of the decision. All other time periods applicable to this subpart also will be computed to begin on the first day following an event or action related to the appeal.

(2) Time periods applicable to this subpart are computed using calendar days. Saturdays, Sundays, or Federal holidays are included in computing the time allowed for filing an appeal; however, when the filing period would expire on a Saturday, Sunday, or Federal

§ 251.89

holiday the filing time is extended to the end of the next Federal working day.

§ 251.89 Time extensions.

(a) *Filing of notice of appeal.* Time for filing a notice of appeal is not extendable.

(b) *All other time periods.* Appellants, Intervenor, Deciding Officers, and Reviewing Officers shall meet the time periods specified in the rules of this subpart, unless a Reviewing Officer has extended the time as provided in this paragraph. Except as noted in paragraph (a) of this section and as prohibited at the discretionary review level (§251.100), the Reviewing Officer may extend all other time periods under this subpart.

(1) For appeals of initial written decisions by the Chief, a Regional Forester, or a Forest Supervisor, a Reviewing Officer, where good cause exists, may grant a written request for extension of time to file a responsive statement or replies thereto. The Reviewing Officer shall rule on requests for extensions within 10 days of receipt of the request and shall provide written notice of the extension ruling to all parties to the appeal.

(2) Except for discretionary reviews of appeal decisions as provided in §251.100 of this subpart, a Reviewing Officer may extend the time period for issuance of the appeal decision, including for purposes of allowing additional time for the Deciding Officer to resolve disputed issues, as provided in §251.93 of this subpart.

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

§ 251.90 Content of notice of appeal.

(a) It is the responsibility of an appellant to provide a Reviewing Officer sufficient narrative evidence and argument to show why a decision by a lower level officer should be reversed or changed.

(b) An appellant must include the following information in a notice of appeal:

(1) The appellant's name, mailing address, and daytime telephone number;

(2) The title or type of written instrument involved, the date of application for or issuance of the written in-

36 CFR Ch. II (7-1-07 Edition)

strument, and the name of the responsible Forest Service Officer;

(3) A brief description and the date of the written decision being appealed;

(4) A statement of how the appellant is adversely affected by the decision being appealed;

(5) A statement of the facts of the dispute and the issue(s) raised by the appeal;

(6) Specific references to any law, regulation, or policy that the appellant believes to be violated and the reason for such an allegation.

(7) A statement as to whether and how the appellant has tried to resolve the issue(s) being appealed with the Deciding Officer, the date of any discussion, and the outcome of that meeting or contact; and

(8) A statement of the relief the appellant seeks.

(c) An appellant may also include one or more of the following in a notice of appeal: a request for oral presentation (§251.97); a request for stay of implementation of the decision pending decision on the appeal (§251.91); or, in those States with a Department of Agriculture certified mediation program, a request for mediation of grazing permit cancellation or suspensions pursuant to §251.103.

[54 FR 3362, Jan. 23, 1989; 54 FR 13807, Apr. 5, 1989, as amended at 54 FR 34510, Aug. 21, 1989; 64 FR 37846, July 14, 1999]

§ 251.91 Stays.

(a) A decision may be implemented during the appeal process, unless the Reviewing Officer grants a stay or unless a term grazing permit holder appeals a decision and simultaneously requests mediation pursuant to §251.103. In the case of mediation requests, a stay is granted automatically upon receipt of the notice of appeal for the duration of the mediation period as provided in §251.103.

(b) An appellant or intervenor may request a stay of a decision at any time while an appeal is pending, if the harmful effects alleged pursuant to paragraph (c)(3) of this section would occur during pendency of the appeal. The Reviewing Officer shall not accept any request to stay implementation of a decision that is not scheduled to begin during pendency of the appeal.