

**Proposed section 215.13** set forth where appeals are filed.

*Comment.* One supportive comment was received for the inclusion of Research Station Directors as Responsible Officials.

*Response.* In the final rule, the table in proposed § 215.13 showing Appeal Deciding Officers is revised to reflect the change discussed in § 215.2. In past appeal rules, appeals were filed with the decisionmaker's direct supervisor. When the 1993 rule was promulgated, the Forest Service thought a more centralized approach would promote both better and more efficient appeal decisionmaking. However, the ARA did not require elevating decisions to a central point. The current rule has had unintended adverse consequences. With the agency's decentralized organization, it has interfered with the healthy relationship existing in the chain of command as well as creating disincentives for collaboration at the decisionmaking level. Therefore, in the final rule, the Appeal Deciding Officer is the next level above the Responsible Official. And, proposed § 215.13 and proposed § 215.19 are combined and designated § 215.8, titled Appeal Deciding Officer. This change is made to set forth all the information concerning the Appeal Deciding Officer in one section.

**Proposed section 215.14** discussed appeal time periods and process.

*Comment.* Some comments suggested additional changes such as creating a specific entity to hear Forest Service appeals, similar to the Department of the Interior Board of Land Appeals; requiring a filing fee for appeal submission (to be returned if appeal is upheld); setting a penalty proportional to any timber devaluation as a result of delays caused by appeals that are not upheld; and setting higher fees for Freedom of Information Act (FOIA) requests.

*Response.* The Department did not address the requested changes because they are beyond the scope of this rulemaking and/or existing authorities granted to the Department.

**Proposed section 215.14, paragraph (a)** set out the time period for appeals to be filed. **Proposed paragraph (b)** described the computation of the 45-day period, which includes weekends and holidays.

*Comment.* Some commenters suggested changes or flexibility in filing period and in how the 45-day period is calculated, i.e., not counting holiday or weekend days in the 45-day calculation.

*Response.* The ARA specifically provides that appeals must be filed within 45 days.

**Proposed section 215.14, paragraph (c)** described evidence for timely filing, including filing appeals electronically.

*Comment.* One comment supported electronic filing of appeals, while another said that electronic appeals should not be allowed since an appellant should make the effort to sign an appeal. One comment suggested the rule address what happens if the Forest Service's "email goes down." Respondents also questioned how to determine when an appeal is due.

*Response.* The proposed rule discusses how timeliness (45 days) is determined for each of the methods available for filing appeals. Concerning the specific requests for addressing potential problems with various means of delivery, the rule is not the appropriate place to address possible scenarios. Each circumstance is more appropriately addressed on a case-by-case basis. The final rule stipulates that if appellants do not receive an automatic acknowledgment electronically that their filing was received, it is their responsibility to file a timely appeal by some other method.

**Proposed section 215.14, paragraph (d)** specified that there will be no time extensions.

*Comment.* Several commenters thought that provision should be made allowing for extensions under certain circumstances.

*Response.* The ARA does not provide for time extensions. In the final rule, paragraphs (a) and (c) are rewritten for clarity and paragraph (d) now requires the Responsible Official to include a list of individuals and organizations who submitted substantive comments during the comment period. This change is linked to appeal eligibility and dismissal. And, proposed § 215.14 is designated § 215.15.

**Proposed section 215.15** described appeal content. **Proposed paragraph (b)** of this section and proposed § 215.1(b) limited appeal issues to those raised during the comment period.

*Comment.* Commenters responding to this proposed paragraph expressed both support and disagreement with the limitation. Some respondents suggested that appeal issues should be limited to those that have a significant effect on the environment, or should be limited to violations of law, regulation, or policy. Those who disagreed expressed several concerns: the inability to raise issues in an appeal that might not arise until after the comment period; changes between a draft and final EIS; the FONSI determination; and loss of the ability to challenge the record.

*Response.* Limiting appeal issues to those raised during the comment period

was proposed as a means of encouraging early participation in project planning rather than raising concerns for the first time after a decision is made. However, after reviewing comments, the Department understands and agrees with the concerns. The final rule removes the requirement from this section and § 215.1 that precluded issues from being raised in an appeal that were not raised during the comment period and paragraph (b) of this section is further rewritten and reorganized. And, as discussed in § 215.19 below, paragraph (b)(3) now asks those filing an appeal with more than one individual or organization to identify a lead appellant as defined in § 215.2.

**Proposed section 215.15, paragraph (c)** addressed non-acceptance of an appeal.

*Comment.* Those commenting opposed not accepting an appeal without a signature, and questioned how authors of electronic appeals will be verified. Additional criteria for not accepting appeals were suggested also.

*Response.* After consideration of the comments, this paragraph has been rewritten in the final rule clarifying the intent of requiring a signature. The phrase "not accept" is replaced with "not process," reflecting what was actually intended by "not accept." It is important for the Department to know the identity of appellants and how to contact them. Not having this information has caused problems in the past. The final rule makes clear that if an appeal is filed and the appellant cannot be identified, and a way to contact the appellant has not been provided, the appeal will not be processed. Further, paragraph (c)(1) is added to clarify that if an appeal is deemed illegible for any reason, it will not be processed. The suggested additional criteria for not accepting appeals (a notarized signature, copy of site visit certification, and description of economic or environmental impact the appellant will suffer by approval of the proposed action) are contrary to the ARA. Proposed § 215.15 is designated § 215.14 in the final rule.

**Proposed section 215.16** detailed when an appeal would be dismissed. It added allowing dismissal when an appellant withdraws an appeal.

*Comment.* All of the comments were in the form of suggestions for additional reasons to dismiss or to delete some of the reasons for dismissal. One commenter cautioned that dismissal without review for reasons of insufficient information should be employed judiciously (paragraph (a)(8)).