

Response. Many of the suggestions do not comply with the ARA. The Department agrees that proposed paragraph (8) should be used only with great care. Concerning paragraph (a)(1), it was not the intent of the Department to imply in the proposed rule that if an attachment is untimely, the appeal itself is untimely and would be dismissed. Therefore, the final rule makes clear in paragraph (b) that any additional information that is untimely will not be considered as a part of the appeal. Proposed paragraph (b) is designated paragraph (c).

Proposed section 215.17 discussed the informal disposition process.

Comment. Two general suggestions were received. One suggested clarifying whether the Responsible Official is to meet with each of the appellants together or separately. A second suggested making a specific provision for all appellants and interested parties to communicate with the Responsible Official during the informal disposition process.

Response. The Department believes there is a better chance of achieving a successful outcome if the rule does not regulate how such meetings are conducted but rather allows the Responsible Official maximum discretion and flexibility in holding informal disposition meetings. Neither does the Department see a need to impose further regulatory requirements regarding communications between the Responsible Official and the appellant.

Proposed section 215.17, paragraph (a) discussed the Responsible Official's responsibility to contact the appellant with an offer to meet.

Comment. One comment suggested that the Responsible Official be required to contact each appellant when an appeal listed multiple names, while another wondered what the phrase "as soon as practicable" meant.

Response. The question about contacting each appellant from an appeal listing multiple names or organizations is clarified in the final rule and explained more fully in § 215.15 above and § 215.19 below. The phrase "as soon as practicable" means there is an expectation that it will be done at the earliest possible time.

Proposed section 215.17, paragraph (b) discussed the time and location of informal resolution meetings.

Comment. Comments requested that the Forest Service build discretion into the requirements to ensure that meetings are in a location convenient and accessible to all parties; that time extensions for the initial meeting should be allowed if all parties agree; and a

deadline for completion of the informal disposition process should be specified.

Response. While not specifically requiring meetings in a location convenient and accessible to all parties, the agency believes this request is met with the requirement that meetings should generally be held at a location within or near the National Forest. However, when that is not possible, this paragraph allows for teleconference. Concerning the timeframe comments, the ARA statutorily sets the 15-day requirement for meeting. The timeframe for completing informal disposition meetings is limited only by the 45-day requirement for the appeal disposition to be completed.

Proposed section 215.17, paragraph (c) discussed the structure of the meeting.

Comment. Many of the comments received discussed who participates in the informal disposition meeting, including allowing "other participants" at informal disposition meetings and having the meeting open to the public. Other comments requested that the recording of informal disposition meetings and telephone meetings be allowed.

Response. After reviewing the comments and the intent of the informal disposition meeting as previously discussed earlier in this section, the final rule omits the reference to "any other participants." However, meetings are still open to the public. Telephone meetings are allowed. Recording of informal disposition meetings is allowed; however, submitting the tape to the Reviewing or Deciding Official is not because the Reviewing Official's recommendation and Deciding Officer's appeal disposition must be based on the same information that was available to the Responsible Official, as well as the appeal.

Proposed section 215.17, paragraph (d) described outcomes.

Comment. There was a suggestion about the "Forest Service making a good faith effort to resolve the appeal" should be addressed, and a suggestion to eliminate the requirement for the Responsible Official to advise the Appeal Deciding Officer when an appellant declines to meet. One comment pointed out an inconsistency between paragraphs (d)(1) and (d)(3).

Response. The Department expects Responsible Officials to meet the intent of the ARA and put forth a good faith effort to achieve a successful outcome at the informal disposition meeting. However, it does not see the need to regulate this expectation. The requirement for the Responsible Official to provide information on the outcome

of the informal disposition meeting to the Appeal Deciding Officer is necessary as it lets both the Appeal Reviewing Officer and Appeal Deciding Officer know whether the appeal has or has not been resolved and whether formal review should continue. Whether or not an appellant meets with the Responsible Official does not prejudice review of an appeal.

The final rule is rewritten, clarifying that the only information transmitted to the Appeal Deciding Officer is the outcome. It also modifies paragraph (d)(3) to read "unresolved portion," removing the inconsistency pointed out in the comments.

Proposed section 215.18 described the appeal review and disposition process. It added a paragraph clarifying procedures for the Responsible Official when an appeal decision includes instructions and added other clarifications regarding appeal disposition.

Comment. General comments received expressed concerns about what should be in the appeal decision letter and availability of appeal decisions.

Response. The Department believes it is not appropriate for a rule to specify the information an appeal decision should include. However, it is appropriate to provide such guidance through other means, and this has been done through Forest Service guidance. Appeal decisions also are posted on the Forest Service and Regional Office World Wide Web/Internet pages.

Proposed section 215.18, paragraph (b) described the formal disposition process.

Comment. Some of the comments received disagreed with the provision allowing for disposing of an appeal without issuing a decision or giving the reason for not issuing a decision. Other comments addressed length of time (45 days) for responding to an appeal and when notification of an appeal decision occurs.

Response. Paragraph (b)(2) was added to ensure that appellants would be notified of the final agency action. The statutory language in the ARA controls not only the length of time within which an appeal decision must be issued (45 days), but also provides for the disposition of an appeal after 45 days has elapsed without an appeal decision. To alleviate concerns about the timing between when an appeal decision is mailed to the appellant(s) and when implementation of the project begins, the final rule clarifies that an appeal decision (paragraph (b)(1)) must be sent within 5 days of its being rendered.