

**Proposed section 215.19** detailed the Appeal Deciding Officer's authority.

*Comment.* Some of those commenting wanted the Appeal Deciding Officer's independence from the Responsible Official clarified; others sought to have the Appeal Deciding Officer publish the procedures under which an appeal is reviewed. Some respondents thought the rule should clarify the level of communication permissible between the Responsible Official and the Appeal Deciding Officer, while others wanted the difference between the Appeal Deciding Officer and Appeal Reviewing Officer roles better defined.

*Response.* The Department believes the roles of the Appeal Deciding Officer and Appeal Reviewing Officer are clearly defined in the rule. Concerning the question about the level of communication permissible between the Responsible Official and the Appeal Deciding Officer, one must keep in mind the need to maintain a fair and objective review. The Appeal Deciding Officer's decision must be based on the same information that was available to the Responsible Official, as well as the appeal. Therefore, in order to maintain fairness and objectivity, discussions between the Appeal Deciding Officer and the Responsible Official, or between the Appeal Deciding Officer and the appellant(s), concerning the merits of the appeal are not allowed. The rule already states that the Appeal Deciding Officer's review is based on the appeal record and Appeal Reviewing Officer's recommendation, and § 215.2 states what is included in the appeal record and its use by the Appeal Deciding Officer.

**Proposed section 215.19, paragraph (a)** discussed procedural determinations.

*Comment.* One suggestion was to make a provision addressing what happens when certain situations are not addressed in the rule.

*Response.* The Department understands the concern and believes the current policy of addressing unique situations on a case-by-case basis is working. It would be impossible to identify and provide for all possible scenarios.

**Proposed section 215.19, paragraph (b)** allowed the Appeal Deciding Officer to consolidate appeals and issue one or more appeal decisions while **proposed paragraph (c)** gave the Appeal Deciding Officer the authority to select a representative when an appeal lists multiple names and/or organizations.

*Comment.* Some respondents wanted clarification for dealing with appeals by multiple groups; some wanted clarification on how paragraph (c)

relates to paragraph (b); some wanted the rule to ensure that when multiple appeals are combined, that the combination is based on similar issues, while others stated the Forest Service has no legal authority to consolidate multiple appeals with multiple appellants and multiple issues or appoint a representative. Some respondents did not see the need for the Forest Service to appoint a representative, while others suggested the Appeal Deciding Officer should have the discretion to request appellants to select their own representative.

*Response.* There is not a direct relationship between proposed paragraph (b) and proposed paragraph (c). For efficiency, proposed paragraph (b) allowed the Appeal Deciding Officer to consolidate appeals for the purpose of issuing one or more appeal decisions. Proposed paragraph (c) allowed the Appeal Deciding Officer to appoint a representative when an appeal lists several different organizations and/or individuals. The Department does have the authority to implement both paragraphs as the ARA left the discretion to the Department to develop and implement a process. If individuals and groups meeting appeal eligibility want to join together to appeal, the Department agrees that it is better for them to appoint their own representative for the purposes of communications. Therefore, in the final rule, § 215.14 (b)(2)(i) now asks those filing an appeal with more than one individual or organization to identify a lead appellant as defined in § 215.2. However, the final rule clarifies in this section that the Appeal Deciding Officer has the authority to appoint the first individual/organization listed if a lead appellant is not identified in the appeal (§ 215.8(b)(2)(ii)).

**Proposed section 215.19, paragraph (d)** clarified that the Appeal Deciding Officer's decision could be different from the Appeal Reviewing Officer's recommendation.

*Comment.* The only comment on this proposed paragraph requested that when this happens, it should be disclosed to the appellants.

*Response.* Currently, the rule already provides for releasing the Appeal Reviewing Officer's recommendation after the appeal decision is rendered. The Appeal Deciding Officer's decision is based on review of the appeal record, including the Appeal Reviewing Officer's recommendation, so releasing it after the decision is appropriate.

In reviewing the proposed rule, the Department determined that it would be more efficient to combine the two sections concerning the Appeal

Deciding Officer. Therefore, the final rule combines proposed § 215.13, Where to file appeals, and proposed § 215.19, Appeal Deciding Officer's authority, into one section designated at § 215.8, Appeal Deciding Officer, in the final rule.

**Proposed section 215.20** discussed the Appeal Reviewing Officer's responsibilities.

*Comment.* One respondent wanted to delete the Appeal Reviewing Officer's position.

*Response.* The Secretary does not have the authority to remove the Appeal Reviewing Officer from the process. The ARA mandates an Appeal Reviewing Officer and the responsibilities.

**Proposed section 215.20, paragraph (b)** discussed the Appeal Reviewing Officer's recommendation.

*Comment.* Some of those commenting on the proposed paragraph asked that the Appeal Reviewing Officer address all procedural issues that develop after an appeal is filed. Others thought the Appeal Reviewing Officer should consult with the Responsible Official whenever there is a question about the record; that their recommendation should always be made public; and review procedures they must follow should be detailed.

*Response.* Because the authority for making the appeal decision lies with the Appeal Deciding Officer, the Department believes it is more appropriate for the Appeal Deciding Officer to make the procedural decisions. While the ARA discusses the Appeal Reviewing Officer's responsibilities, it does not mandate the details of the review process. The Department believes that maximum flexibility should be given to an Appeal Deciding Officer to decide what is expected from the Appeal Reviewing Officer in terms of their recommendation. The final rule does limit the review to the decision documentation and appeal. The current rule already states that the Appeal Reviewing Officer's recommendation is available once the disposition of the appeal is concluded. The appeal process, including the Appeal Reviewing Officer's recommendation, is intended to be an independent review at the same or higher organizational level as the Responsible Official. The integrity of the appeal record must be maintained consistently because the Appeal Reviewing Officer's recommendation must be based on the same information that was available to the Responsible Official, as well as the appeal. To maintain a fair and objective review, communication between the Responsible Official and the Appeal