

### Subpart C—Appeal of Decisions Relating to Occupancy and Use of National Forest System Lands

AUTHORITY: 7 U.S.C. 5101–5106; 16 U.S.C. 472, 551.

SOURCE: 54 FR 3362, Jan. 23, 1989, unless otherwise noted.

#### § 251.80 Purpose and scope.

(a) This subpart provides a process by which those who hold or, in certain instances, those who apply for written authorizations to occupy and use National Forest System lands, may appeal a written decision by an authorized Forest Service line officer with regard to issuance, approval, or administration of the written instrument. The rules in the subpart establish who may appeal under these rules, the kinds of decisions that can and cannot be appealed, the responsibilities of parties to the appeal, and the various procedures and timeframes that will govern the conduct of appeals under this subpart.

(b) The rules in this subpart seek to offer appellants a fair and deliberate process for appealing and obtaining administrative review of decisions regarding written instruments that authorize the occupancy and use of National Forest System lands.

#### § 251.81 Definitions and terminology.

For the purposes of this subpart, the following terms are defined:

*Appeal.* A request to a higher ranking officer for relief from a written decision filed under this subpart by an applicant for or a holder of a written instrument issued or approved by a Forest Service line officer.

*Appeal decision.* The written decision rendered by the Reviewing Officer on an appeal for relief under this subpart. The use of this term is limited to the final decision of a Reviewing Officer and does not refer to a stay decision or to any other determinations or procedural orders made on the conduct of an appeal (§ 251.99).

*Appeal record.* The documents submitted to the Reviewing Officer by an appellant, intervenor, or Deciding Officer (§ 251.98).

*Appellant.* An eligible applicant for or holder of a written instrument issued for the occupancy and use of National Forest System land (or their authorized agent or representative) who files an appeal pursuant to the provisions of this subpart (§ 251.86).

*Deciding officer.* The Forest Service line officer who makes a decision related to issuance, approval, or administration of an authorization to occupancy and use National Forest System lands that is appealed under this subpart.

*Decisions regarding a written instrument or authorization to occupy and use National Forest System lands.* A broad, all inclusive phrase used throughout 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.

## § 251.82

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*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.

(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