

Forest Service, USDA

§ 251.90

(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 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, Intervenors, 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 instrument, 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

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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.

(c) To request a stay of decision, an appellant or intervenor must—

(1) File a written request with the Reviewing Officer;

(2) Simultaneously send a copy of the stay request to any other appellant(s), to intervenor(s), and to the Deciding Officer.

(3) Provide a written justification of the need for a stay, which at a minimum includes the following:

(i) A description of the specific project(s), activity(ies), or action(s) to be stopped.

(ii) Specific reasons why the stay should be granted in sufficient detail to permit the Reviewing Officer to evaluate and rule upon the stay request, including at a minimum:

(A) The specific adverse effect(s) upon the requester;

(B) Harmful site-specific impacts or effects on resources in the area af-

ected by the activity(ies) to be stopped, and

(C) How the cited effects and impacts would prevent a meaningful decision on the merits.

(d) A Deciding Officer and other parties to an appeal may provide the Reviewing Officer with a written response to a stay request. A copy of any response must be sent to all parties to the appeal.

(e) *Timeframe.* The Reviewing Officer must rule on a stay request no later than 10 calendar days from receipt.

(f) *Criteria to consider.* In deciding a stay request, a Reviewing Officer shall consider:

(1) Information provided by the requester pursuant to paragraph (c) of this section including the validity of any claim of adverse effect on the requester;

(2) The effect that granting a stay would have on preserving a meaningful appeal on the merits;

(3) Any information provided by the Deciding Officer or other party to the appeal in response to the stay request; and

(4) Any other factors the Reviewing Officer considers relevant to the decision.

(g) *Notice of decision on a stay request.* A Reviewing Officer must issue a written decision on a stay request.

(1) If a stay is granted, the stay shall specify the specific activities to be stopped, duration of the stay, and reasons for granting the stay.

(2) If a stay is denied in whole or in part, the decision shall specify the reasons for the denial.

(3) A copy of a decision on a stay request shall be sent to all parties to the appeal.

(h) *Duration.* A stay shall remain in effect for the 15-day period for determining discretionary review (§ 251.100), unless changed by the Reviewing Officer in accordance with paragraph (i) of this section.

(i) *Change in a stay.* A Reviewing Officer may change a stay decision in accordance with any terms established in the stay decision itself or at any time during pendency of an appeal that circumstances support a change of stay. In making any changes to a stay decision, the Reviewing Officer must issue