

## § 214.20

Reviewing Officer to determine whether discretionary review of the appeal decision should be conducted.

(2) One day after issuance of a Chief's decision that is eligible for discretionary review under § 214.7(b)(2), the Chief shall send the decision to the Discretionary Reviewing Officer to determine whether discretionary review should be conducted.

(b) *Criteria for determining whether to conduct discretionary review.* In deciding whether to conduct discretionary review, the Discretionary Reviewing Officer should, at a minimum, consider the degree of controversy surrounding the decision, the potential for litigation, and the extent to which the decision establishes precedent or new policy.

(c) *Time period.* Upon receipt of the appeal decision, appeal, and appealable decision or Chief's decision, the Discretionary Reviewing Officer shall have 30 days to determine whether to conduct discretionary review and may request the appeal record or the record related to the Chief's decision during that time to assist in making that determination. If a request for the record is made, it must be transmitted to the Discretionary Reviewing Officer within 5 days.

(d) *Notification.* The Discretionary Reviewing Officer shall notify the parties and the Appeal Deciding Officer in writing of a decision to conduct discretionary review. The Discretionary Reviewing Officer may notify the parties and the Appeal Deciding Officer of a decision not to conduct discretionary review within 30 days. If the Discretionary Reviewing Officer takes no action within 30 days of receipt of the appeal decision, appeal, and appealable decision or Chief's decision, the appeal decision or Chief's decision shall constitute USDA's final administrative decision.

(e) *Scope of discretionary review and issuance of a discretionary review decision.* Discretionary review shall be limited to the record. No additional information shall be considered by the Discretionary Reviewing Officer. The Discretionary Reviewing Officer shall have 30 days to issue a discretionary review decision after notification of the parties and Appeal Deciding Officer has occurred pursuant to § 214.19(d).

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The Discretionary Reviewing Officer's decision shall constitute USDA's final administrative decision. If a discretionary review decision is not issued within 30 days following the notification of the decision to conduct discretionary review, the appeal decision or Chief's decision shall constitute USDA's final administrative decision.

### § 214.20 Exhaustion of administrative remedies.

Per 7 U.S.C. 6912(e), judicial review of a decision that is appealable under this part is premature unless the plaintiff has exhausted the administrative remedies under this part.

### § 214.21 Information collection requirements.

The rules of this part governing appeal of decisions relating to occupancy or use of National Forest System lands and resources specify the information that an appellant must provide in an appeal. Therefore, these rules contain information collection requirements as defined in 5 CFR part 1320. These information collection requirements are assigned Office of Management and Budget Control Number 0596–0231.

### § 214.22 Applicability and effective date.

This part prescribes the procedure for administrative review of appealable decisions and Chief's decisions set forth in § 214.4 issued on or after June 5, 2013.

## PART 215 [RESERVED]

## PART 216—PUBLIC NOTICE AND COMMENT FOR STANDARDS, CRITERIA, AND GUIDANCE APPLICABLE TO FOREST SERVICE PROGRAMS

Sec.

216.1 Purpose and scope.

216.2 Definition.

216.3 Notice and opportunity for public comment.

216.4 Interim directives.

AUTHORITY: 16 U.S.C. 1612(a).

SOURCE: 83 FR 13649, March 30, 2018, unless otherwise noted.